



Sustainable Advocacy

Capabilities and attitudes of Australian human rights NGOs

Simon Rice and Scott Calnan

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Sustainable Advocacy:

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The project was directed by Simon Rice for Australian Lawyers for Human Rights and, for the Australian Human Rights Centre, first by John Squires and then by Associate Professor Andrea Durbach. The project was managed first by Indira Rosenthal and then by Jenni Whelan. Michael Walton and Caitlin Boyce were research assistants.

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The survey instrument was developed with the assistance of the NSW Law and Justice Foundation. The survey data was analysed and reported on by Dr Ann Eyland. Data charts were produced by Jonathon Light.

The project report was written by Simon Rice and Dr Scott Calnan. Simon and Scott co-wrote chapters 1, 4 and 5 and Simon wrote chapters 2 and 3. Their draft report was enhanced by structural editing by Margaret Farmer.

Foreword

This research is unique and valuable. It is the first ever attempt to record and report the identity, structure, operations, activities and attitudes of non-governmental human rights organisations in Australia. The research complements international research on human rights NGOs, and offers a rich collection of data to assist human rights organisations in Australia in their planning, development and advocacy.

Experience tells us that the political and funding environment in late 2003, when the respondents answered the survey instrument and the expert commentators expressed their views, has not changed in any substantial way. The range and complexity of the challenges faced by human rights advocates and non-governmental organisations have only increased in the time that the survey data has been analysed and reported. As is apparent from the references throughout the report, those developments have informed the analysis of the data and the drafting of the report.

Australia is well served by dedicated, knowledgeable and articulate advocates for a wide range of human rights issues. But most are challenged in their ability to respond to developments and new issues as they arise, while maintaining services, informing the community, engaging with policy makers, responding to news media, nurturing new staff, seeking and accounting for funds, managing organisations, and refining the many skills necessary to do all this effectively.

The impetus for this research was a belief that human rights advocacy in Australia might be stronger if it were supported by a single national mechanism of some sort, possibly a national human rights NGO as exists in many other countries. But it was recognised that no such 'solution' can be imposed on an active and sophisticated human rights NGO sector, and there was, in any event, some doubt about the nature and extent of the 'problem' to which a national response might be a solution.

The report's description and analysis of NGOs' structure and culture will prompt those organisations to reflect, and will give them a sound basis for their own development. The report's account of NGOs' use of social justice and human rights language is a fascinating perspective on the strategic approach that they take to engaging with and educating policy makers and the community. And the answer to the question 'what about a new national human rights NGO' gives a clear direction for further research and policy development within Australia's human rights NGO sector.

This report is a significant contribution from Australia to the growing international research on human rights NGOs. As well, it is a significant first step towards promoting a stronger human rights culture in Australia.

Simeon Beckett
President
Australian Lawyers for Human Rights

Andrea Durbach
Director
Australian Human Rights Centre

November 2007.

Summary

The research paints a picture of human rights NGOs in Australia as well-planned organisations with good human rights knowledge, but reliant on multiple sources of conditional government grant funds and constrained by a range of factors in reaching their human rights objectives. They see the concepts of human rights and social justice as interdependent and largely interchangeable. The terms 'human rights' and 'social justice' are seen to have different import and to carry a different message, depending on the circumstances.

The research shows that Australian human rights NGOs work within strong networks, using international human rights standards in their work but comfortable with a 'social justice' identity. They focus on lobbying and policy submissions as a tactics to achieve their goals, along with some individual representation, publication and education.

Australian human rights NGOs agree that a more targeted approach to national human rights advocacy is needed. They see funding, and access to the media, bureaucracy and politicians as the main ways in which a national approach would assist them in their human rights work, and they see knowledge about human rights standards, lobbying and law reform as the main areas of expertise that a national model could help them with. To meet this need, Australian human rights NGOs would prefer to see the establishment of an NGO coalition or alliance, or perhaps a coordinating secretariat, rather than a new peak body or national human rights NGO.

The conclusions reached throughout the report are summarised in Chapter 6.

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Introduction

Human rights do not loom large in the consciousness of Australia. The popular perception is that people in Australia, living in an established industrialised democracy, face neither the confronting threat to security and liberty, nor the dire poverty, that affronts human dignity in many parts of the world. But human rights issues are persistently present in Australia, masked by a general sense of well-being, and more recently arising in the security measures taken to protect that very feeling of comfort.

Human rights issues are not ignored in Australia. They are the subject of debate, comment, campaigns, lobbying, protest and complaint, by a wide range of people and non-governmental organisations (NGOs). Nonetheless, the experience of members of Australian Lawyers for Human Rights (ALHR) over some years of human rights activity is that many human rights issues in Australia are *not* being addressed sufficiently, or at all, and that many Australian human rights NGOs are limited in their capacity to address human rights issues. This perception led ALHR to develop a project that would describe non-governmental human rights advocacy in Australia, reporting on current human rights capabilities and attitudes among human rights advocates and NGOs in Australia. The research question driving this project was whether there are significant gaps in the range of human rights-related activities, and/or significant outstanding needs among Australian human rights NGOs.

The resulting report, *Sustainable Advocacy: Capabilities and attitudes of Australian human rights NGOs*, presents a picture of who human rights NGOs in Australia are and what they do – their structure, culture and activities, their sources of funding, and constraints on their activities – and of their attitudes to human rights, social justice and the idea of taking a national approach to human rights. Significantly, it reports challenges that Australian human rights NGOs face in doing their work, and areas in which NGOs believe their ability to do their work could be better supported. The result is an overview of non-governmental human rights advocacy in Australia, and a valuable basis from which to develop strategies for improving human rights protection in Australia, particularly through strengthening NGOs and enhancing their ability to undertake human rights activities.

Chapter 1 ‘The Research Context’ elaborates on the crucial nexus between human rights, government, and NGOs, and makes the case that for some years the political and social environment in Australia has been a challenging one for NGOs generally. It describes how the Federal government has adopted positions and policies that are critical of, and occasionally hostile to, the role of NGOs and to their adverse observations on human rights issues in Australia. The chapter describes the Australian human rights environment, including specific current human rights issues and official attitudes, the broad and inclusive approach to the definition of NGO central to this research, key characteristics of the Australian NGO environment, the changing role of NGOs in Australia and internationally, and the fact that in Australia, atypically for a Western democracy, there is no national human rights NGO.

Chapter 2 ‘Research Methodology and Design’ describes the approach taken to the research. In conducting the research ALHR did not assume that the greatest need of NGOs is secure and increased funding. Rather, the research set out to clearly define ‘the problem’ facing NGOs, if indeed there would prove to be one. If the research were to establish that more funds or other resources are required, they are more likely to be obtained on the basis of a sound measurement

of need arising from the research than from a simple plea based on asserted need.

The research processes and ethics, and information about the survey and survey respondents, are explained. Components of the survey such as the survey instrument, and lists of organisations and of interviewees, are included as appendices.

The research first inquired into the capabilities of NGOs, through a series of detailed questions about their objectives, governance, clients, staffing, funding, planning and activities, and constraints on these activities. The research then inquired into the NGOs' attitudes to and understanding of 'human rights' and their relationship to the concept of 'social justice'. Finally, the research inquired into the NGOs' attitudes to the establishment of a single national capacity for human rights advocacy in Australia, and its acceptability to NGOs as a means of supporting them in their work.

The research was conducted in late 2003. The data that was collected remains valid in an environment in which little has changed on the issues that are the focus of the research. As this report notes through references to contemporary literature, government policies and attitudes in relation to human rights and NGO activity have not altered since the data was collected, and the challenges that NGOs face in human rights advocacy remain or, in some instances, have been exacerbated. Where there have been changes or developments they are noted in the report.

Chapter 3 'Capabilities of NGOs in Australia' presents the NGOs' responses to detailed questions about their structure, funding and planning, obstacles to achieving their human rights plans, their organisational objectives and work, and the human rights resources and knowledge they deploy in that work. The responses are analysed in light of contemporary research.

Chapter 4 'Attitudes to human rights and social justice' introduces the usual understandings of the terms 'human rights' and 'social justice' before presenting the research findings on how NGOs themselves understand and use the terms, and then analysing these findings.

Chapter 5 'Attitudes to national human rights advocacy' presents NGOs' attitudes to a national approach to human rights, including their perception of the need and the value of, and their attitudes to, possible models for a national approach. These findings are analysed in conjunction with the views of expert commentators, and the Chapter concludes with a recommendation for further research on a national approach to human rights advocacy.

Chapter 6 'Conclusions' summarises the research findings and analysis from Chapters 3, 4 and 5 into 17 conclusions.

Chapter 1 The research context

1.1 Introduction

This chapter describes the political environment within which the research was conceived, developed, conducted and reported. It describes the way in which international human rights standards are marginal to political debate and policy development in Australia, illustrated most starkly and persistently by the absence of, and resistance to, a national legislative guarantee of human rights standards as, at least, a code for government compliance.

Despite the political and public lack of interest and will, non-government organisations (NGOs) work to achieve and maintain human rights standards in Australia. They do so when they not only lack political and public support, but are under political attack. Perhaps because they are efficient and effective in achieving their aims, NGOs internationally and in Australia are under increasing scrutiny, and pressure to establish their legitimacy as influential players in policy debates.

1.2 The Australian human rights environment

1.2.1 Contemporary human right issues in Australia

People throughout Australian society face human rights issues daily. Australia's indigenous peoples live without water, health, shelter and security,¹ men, women, children and families live below the poverty line,² prisoners are held in solitary confinement,³ people on remand are gaoled with prisoners,⁴ young people are gaoled with adult prisoners,⁵ youth suicide rates are high,⁶ same sex couples are subjected to discrimination without remedy,⁷ people are subjected to religious discrimination and vilification without remedy,⁸ asylum seekers continue to be

-
- 1 see eg Aboriginal and Torres Strait Islander Social Justice Commissioner *Social Justice Report 2005*, Commonwealth of Australia 2005 at Chapter 2 and Appendix 4; Human Rights and Equal Opportunity Commission, *Submission of the to the Senate Legal and Constitutional Committee on the Northern Territory National Emergency Response Legislation*, 10 August 2007 at <<http://www.hreoc.gov.au/legal/submissions/>>; Miloon Kothari, United Nations Special Rapporteur on adequate housing, 'Mission to Australia 31 July – 15 August 2006, Preliminary observations', Canberra, 15 August 2006.
 - 2 see eg Senate Community Affairs References Committee *A Hand up not a Hand out: Renewing the Fight against Poverty. Report on Poverty and Financial Hardship, March 2004*, especially at Chapter 3.
 - 3 see eg *Brough v Australia*, UN Human Rights Committee (2006), UN Doc CCPR/C/86/D/1184/2003; *Cabal and Pasini v Australia*, UN Human Rights Committee (2001), UN Doc CCPR/C/78/D/1020/2001.
 - 4 Australia maintains its reservation to Article 10(2)(a) of the International Covenant on Civil and Political Rights (ICCPR) (adopted 16 Dec 1976, entered into force 23 Mar 1976, 999 UNTS 171)– see eg *Cabal and Pasini v Australia* at note 3 above.
 - 5 Australia maintains its reservation to Article 37(c) of the Convention on the Rights of the Child (CroC) (adopted 20 Nov 1989, entered into force 2 Sept 1990, GA Res 44/25, UN Doc A/44/49 at 166).
 - 6 see eg Australian Institute of Family Studies *Valuing Young Lives: Evaluation of the National Youth Suicide Prevention Strategy*, Commonwealth of Australia 2000, especially chapter 1; Australian Institute of Health and Welfare 2007, *Young Australians: Their health and wellbeing 2007*, AIHW, Canberra.
 - 7 see eg *Human Rights and Equal Opportunity Commission National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits Discussion Paper II*, Commonwealth of Australia September 2006
 - 8 see eg Human Rights and Equal Opportunity Commission *Article 18 Freedom of religion and belief*, Commonwealth of Australia 1998, especially Chapters 4 and 5, and Findings at pp 11 and 139, WA Equal Opportunity Commission *Racial and Religious Vilification Consultation Paper*, Perth 2004.

vulnerable to open-ended detention,⁹ and terrorism suspects are held without charge.¹⁰

Human rights issues arise constantly under Federal State and Territory laws. Examples include the threat of sedition laws to freedom of speech,¹¹ anti-terrorism laws that encroach on any of liberty, privacy and the right to a fair trial,¹² migration laws that limit liberty and the right to seek asylum,¹³ repeated threats to restrict the powers and autonomy of HREOC,¹⁴ threats to the scope of the sex and disability discrimination acts,¹⁵ the enactment of mandatory sentencing provisions,¹⁶ proposals to abolish the double jeopardy rule,¹⁷ restrictions on access to social security,¹⁸ and limitations on the right to strike and to collectively bargain.¹⁹

Awareness and understanding of human rights in Australia is low. Australia does not have a national legal guarantee for the protection of human rights,²⁰ law and policy debates are rarely

⁹ see eg Human Rights and Equal Opportunity Commission *Those Who've Come Across the Seas: Detention of Unauthorised Arrivals*, Commonwealth of Australia May 1998; Human Rights and Equal Opportunity Commission *National Inquiry into Children in Immigration Detention Report - A Last Resort?*, Commonwealth of Australia May 2004; *Al-Kateb v Godwin* 219 CLR 562.

¹⁰ see eg Senate Legal and Constitutional Legislation Committee *Provisions of the Anti-Terrorism Bill (No. 2) 2005* Commonwealth of Australia 2005b especially at Chapter 3; articles collected in *University of Western Sydney Law Review* Volume 9 (2005).

¹¹ Australian Law Reform Commission *Fighting Words: A Review of Sedition Laws in Australia*, ALRC 104, Commonwealth of Australia 2006; Simon Bronitt, and James Stellios 'Sedition, Security and Human Rights: 'Unbalanced' Law Reform in the 'War on Terror'' 30 (2006) *Melbourne University Law Review* 923

¹² see eg *Anti-Terrorism Act (No 2) 2005* (Cth), *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* (Cth) and *Criminal Code Amendment (Terrorist Organisations) Act 2004* (Cth). See also M. Head 'Detention and Anti-Terrorism Legislation' (2005) 9 *University of Western Sydney Law Review* 1-9, and R. Abraham 'The Right to Privacy and the National Security Debate' (Jan/Feb 2007) 78 *Precedent* 30-33.

¹³ see G Harbord "Cruel Treatment of Asylum Seekers" (2004) 26(6) *Bulletin (Law Society of South Australia)* 33-25; T Morris et al 'Human Rights Issues in the Return of Asylum Seekers' 14 (2) *Human Rights Defender* 18-20; M Head 'High Court Sanctions Indefinite Detention of Asylum Seekers' (2004) 8 *University of Western Sydney Law Review* 153; George Williams 'National Security, Terrorism and Bills of Rights'- (2003) 9 *AJHR* 263.

¹⁴ see eg Human Rights Legislation Amendment Bill (No. 2) 1998, Human Rights Legislation Amendment Bill (No. 2) 1999, Human Rights and Equal Opportunity Commission Amendment Bill 2002, Australian Human Rights Commission Legislation Bill 2003; see also D Boniface "If First You Don't Succeed... Chipping Away at the Human Rights and Equal Opportunity Commission" (Dec 2003) 12(3) *Human Rights Defender* 8-9, and R Redman and G Williams "Guarding Human Rights" (Sept 2003) 77(9) *Law Institute Journal* 62-66; Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations: Australia* CERD/C/AUS/CO/14, 20 March 2005 at [10].

¹⁵ see A Syris 'Dismantling Discriminatory Barriers: Access to Assisted Reproductive Services for Single Women and Lesbian Couples' (2004) 30(2) *Monash University Law Review* 229-268; K Walker 'The Bishops, the Doctor, his Patient and the Attorney-General. The Conclusion of the McBain Litigation' (2002) 30(3) *Federal Law Review* 507-534 and S Roberts 'The Inequality of Treating Unequals Equally: The Future of Direct Discrimination Under the Disability Discrimination Act 1992 (Cth)' (April 2005) 45 *AIAL Forum* 20-38.

¹⁶ see B Winge 'Mandatory Sentencing Laws and Their Effect on Australia's Indigenous Population' (Summer 2002) 33(3) *Columbia Human Rights Law Review* 693-732 and D Hendriss-Andersen 'Mandatory Sentencing: The Failure of the Australian Legal System to Protect the Human Rights of Australians' (2000) 7 *James Cook University Law Review* 235-250; Committee on the Elimination of Racial Discrimination at note 14 above, at [20].

¹⁷ see M Forbes 'Reforming the Double Jeopardy Rule' (June 2004) 42(5) *Law Society Journal* 72-75; K Gibbs 'Double Jeopardy Rule in the Remaking' (9 April 2004) 186 *Lawyers Weekly* 1 and C Parkinson 'Double Jeopardy Reform: A New Evidence Based Exception for Acquittals' (2003) 26(3) *University of New South Wales Law Journal* 603-621; and see now *Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2006* (NSW).

¹⁸ see for example T Walsh 'Breaching the Right to Social Security' (2003) 12(1) *Griffith Law Review* 44-63.

¹⁹ see S McCrystal 'Smothering the Right to Strike and Industrial Action' (July 2006) 19(2) *Australian Journal of Labour Law* 198-209 and M Thistlewaite 'Work Choices: The End of the Fair Go at Work' (2006) 15(2) *Human Rights Defender* 20-21; Anthony Forsyth and Carolyn Sutherland 'From 'Uncharted Seas' to the 'Stormy Waters': How Will Trade Unions Fare under the Work Choices Legislation?' (2006) 16(2) *The Economics and Labour Relations Review* 215.

²⁰ see G Williams, *A Charter of Rights for Australia*, UNSW Press, Sydney, 2007; G. Williams *The Case for an Australian Bill of Rights: Freedom in the War on Terror* UNSW Press, Sydney, 2004; D Malcolm 'A Human Rights Act for Australia' (Dec 2006) 8 *University of Notre Dame Australia Law Review* 19-30; Adrienne Stone 'Australia's Constitutional Rights and the Problem of Interpretive Disagreement' 27 *Sydney Law Review* 29; *Australian Journal of Human Rights* Vol 9 (1) (2003) passim.

defined by human rights considerations,²¹ human rights scrutiny of legislation, when it occurs, is not binding,²² human rights education is under-resourced,²³ and human rights complaints mechanisms are under-used.²⁴

1.2.2 Government attitudes to human right in Australia

Political leadership in Australia is inconsistent in its support for human rights.²⁵ Australia consistently rejects UN Human Rights Committee views,²⁶ the Federal Government has reduced HREOC's funding and maintains a policy to limit to its autonomy,²⁷ and the Federal Government rejects Court findings of human rights violations.²⁸ Since the 1990s the Australian Government has either led or reflected a noticeably dismissive or even hostile view in Australian society towards the relevance of international human rights standards.²⁹

The Bureau of Democracy, Human Rights, and Labor of the USA State Department reports annually on Australia's human rights performance in its Country Report on Human Rights Practices.³⁰ In the following extracts the emphasised sections record examples of that dismissive or hostile view. Reporting in 2001 the US State Department said:

In July [2000] the U.N. Human Rights Committee stated that Australia should do more to secure for indigenous Australians a stronger role in decision making over their traditional lands and natural resources. The Committee urged Australia to do more to provide remedy to members of the "Stolen Generation" (see Section 5). The Committee also recommended review of mandatory sentencing policies (see Section 5) and mandatory detention of illegal arrivals (see Section 2.d.). *The Government responded that many of the recommendations were neither necessary nor desirable and reiterated its belief that mandatory detention of illegal arrivals was consistent with its treaty obligations.*

21 see H. Charlesworth 'The Australian Reluctance About Rights' in P. Alston (ed) *Towards an Australian Bill of Rights* (HREOC/CIPL, Canberra, 1994) at 21ff; Jane Stratton and Siobhan McCann 'Staring into the abyss – confronting the absence of decency in Australian refugee law and policy development' (2002) 8(1) AJHR 141; Hilary Charlesworth, Madelaine Chiam, Devika Hovell, and George Williams 'Deep Anxieties: Australia and the International Legal Order' (2003) 25 *Sydney Law Review* 423.

22 Senate Standing Committee for the Scrutiny of Bills: s(1a) Senate Standing Order 24; Queensland Scrutiny of Legislation Committee: *Parliamentary Committees Act* 1995 (Qld) s4; Scrutiny of Acts and Regulations Committee: *Parliamentary Committees Act* 1968 (Vic) s4D; Legislation Review Committee: *Legislation Review Act* 1987 (NSW) s8A; *Human Rights Act* 2004 (ACT) s32 [declaration of incompatibility]; Charter of Human Rights and Responsibilities Act 2006 (Vic) s28 [statement of incompatibility]; see also cases under the Human Rights Act 2004 (ACT) such as *Pappas v Noble* [2006] ACTSC 39 (27 April 2006) [human rights interpretation of legislation].

23 see Senator Marise Payne speech to National Committee on Human Rights Education Conference : Human Rights: New Paradigms and New Responsibilities, 5/12/03: "Australia has yet to address three key initiatives called for in the goals for the [UN] Decade [for Human Rights Education] . . ."

24 see A Devereaux 'Human Rights by Agreement? A Case Study of the Human Rights and Equal Opportunity Commission's Use of Conciliation' (1996) 7(4) *Australian Dispute Resolution Journal* 280-301.

25 eg Jonathan Pearlman 'Attorney-General rejects charter of rights for NSW' Sydney Morning Herald April 18, 2007, referring to the newly appointed NSW Attorney-General, John Hatzistergos,. compare to the enactment in the ACT and Victoria of legislative guarantee of rights.

26 see M Walton 'Are We Listening to the United Nations? Australia and the UN Human Rights Committee' (2003) 12(3) *Human Rights Defender* 20-22, and E Evatt 'How Australia "Supports" the United Nations Human Rights Treaty System' (2001) 12(1) *Public Law Review* 3-8; J Debeljak 'Rights Protection Without Judicial Supremacy: A Review of the Canadian and British Models of Bills of Rights' (2002) 26 *Melbourne University Law Review* 285 at p 291.

27 see D Boniface 'Does Anyone Really Know Where We Are Going? Changes to the Human Rights and Equal Opportunity Commission' (1997) 4(1) *Australian Journal of Human Rights* 206-212; and see references at note 14 above.

28 see eg W Lacey 'In the Wake of Teoh: Finding an Appropriate Government Response' (2001) 29(2) *Federal Law Review* 219, and D Hogan 'Teoh and Human Rights in Australia' (June 2001) 29 *Australian Children's Rights News* 14-15.

29 see generally Spencer Zifcak, *Mr Ruddock goes to Geneva*, UNSW Press, 2003.

30 <<http://www.state.gov/g/drl/rls/hrrpt/>>.

In March the International Labor Organization's (ILO's) Committee on Freedom of Association made a series of recommendations regarding the country's labor laws, especially the Workplace Relations Act of 1996 and the Trade Practices Act (see Sections 6a and 6b). *The Government stated in response to the recommendations that the ILO's comments "reflect an inadequate understanding of Australian law," and stated that the ILO failed to understand the domestic role that certain labor laws played. The Government rejected all of the ILO's recommendations.*

In August the Government announced the results of a review of its cooperation with U.N. human rights treaty committees. While maintaining its commitment to involvement with the committees, *the Government, as a result of the review, decided to limit visits by such committees to cases where a "compelling reason" exists for the visit. In addition, the Government stated that it would not delay removal of unsuccessful asylum seekers who appealed to one of the U.N. Human Rights mechanisms; previously, such persons had been allowed to remain pending the resolution of the appeal of their cases to such U.N. bodies.*

The State Department's report for 2002 reported a similar approach by the Australian Government (emphasis added):

In May [2002] the U.N. Working Group on Arbitrary Detention conducted an investigation into the detention centers. After visiting five facilities, the U.N. group reported that "collective depression" was driving asylum seekers to acts of self-harm and attempted suicide. The investigation expressed deep concern about the policy of detaining children, infants, unaccompanied minors, pregnant women, the elderly, and asylum seekers with disabilities. *The Government rejected this criticism, saying that it considered its detention policy successful and saw no reason to modify it.*

In July the U.N. High Commissioner for Human Rights' Special Envoy released a report on Human Rights and Immigration Detention in Australia. The report called the Government's policy on asylum seekers a "great human tragedy." The envoy charged that the conditions inside the Woomera Detention Centre breached the Convention on the Rights of Child and an international covenant relating to torture and other cruel and degrading treatment. The envoy cited prolonged detention periods as a major concern, alleging these sometimes resulted from lengthy and cumbersome appeal procedures and unnecessary delays. *The Government dismissed the report as fundamentally and factually flawed, unbalanced, and emotive, charging it misrepresented government policy and ignored the fact that people in immigration detention had arrived in the country illegally.*

Similarly, the State Department's report for 2004 reported (emphasis added):

In its May 2004 report on children in immigration detention, the government-funded, but independent, Human Rights and Equal Opportunity Commission (HREOC) concluded that the country's laws requiring child asylum seekers to be held in mandatory immigration detention breached the UN Convention on the Rights of the Child (CRC), to which the country is a party. *The government rejected the commission's view that its policies violated the CRC but announced in June that the Migration Act would be amended to provide that "a minor child shall only be detained as a measure of last resort."*

1.2.3 International criticism of Australian human rights standards

In the view of many international human rights NGOs, human rights standards in Australia have been subject to government hostility or indifference since the 1990s.

Amnesty International has been consistently critical of Australian governments, from at least 1999 when it accused the Australian government of warning it of “serious consequences” if it continued to campaign for a detained asylum seeker,³¹ to 2007 when it reported that Australia’s counter-terrorism measures pose a threat to human rights.³²

Human Rights Watch has been similarly critical of Australian governments, from a press release in 2000 when it “condemned the Australian government’s decision to restrict cooperation with UN bodies critical of Australia’s human rights practices”³³ to a statement on October 13, 2005³⁴ that condemned Australia’s anti-terrorism measures as a threat to Australian civil liberties and a violation of international law.

In 2005 the International Commission of Jurists (ICJ) published its opposition to Australia’s “draconian” anti-terrorism laws that “erode fundamental civil liberties and human rights”,³⁵ and as long ago as 2000 it stated that the Australian government’s withdrawal of cooperation with the UN human rights system was an “unhelpful precedent” that “encourages states to avoid critical scrutiny of their human rights performance”.³⁶

In a similar vein, Human Rights First (formerly the Lawyers Committee for Human Rights) stated in 2002 that “Australian detention practices, including its detention of children, have been internationally condemned as inconsistent with international law”.³⁷

Regional human rights NGOs have commented on Australia’s declining human rights record. In a written statement to the UN Human Rights Commission in 2003, the Asian Legal Resource Centre remarked that “During the last year a parade of images has shattered Australia’s pretension to being a regional exemplar for human rights advocates”.³⁸ Similarly, the South Asian Human Rights Documentation Centre remarked in a statement to the Commission: “Australia, which used to preach human rights to the undemocratic states in the Asia Pacific region, is increasingly following their lead.”³⁹

Various sections of the UN human rights system have made harsh statements about Australia’s human rights record. The UN High Commissioner for Refugees was widely reported accusing Australia of resorting to the “law of the jungle” in its handling of the Tampa incident.⁴⁰ More diplomatically, Martin Scheinin, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, remarked that the bail provisions of Australia’s anti-terrorism legislation violate article 9(3) of the ICCPR, and that

31 <www.amnesty.org/ailib/aireport/ar99/asa12.htm>

32 <<http://thereport.amnesty.org/eng/Regions/Asia-Pacific/Australia>>

33 <www.hrw.org/press/2000/08/australia.htm>

34 <<http://hrw.org/english/docs/2005/10/13/austra11863.htm>>

35 <www.icj.org/news.php3?id_article=3788&lang=en>

36 <www.icj.org/news.php3?id_article=2512&lang=en>

37 Lawyers Committee for Human Rights *Testing the Faithful: Religion and Asylum; A Briefing Paper Prepared for the Roundtable on Religion-based Persecution Claims*, November 2002 at p 9.

38 *Written Statement by Asian Legal Resource Centre (ALRC)* E/CN4/2003/NGO/144 at paragraph 1.

39 *Statement by the South Asian Human Rights Documentation Centre (SAHRDC)* E/CN4/2002/NGO/39.

40 *ibid.*, and UNHCR *Refugees* (2001) Vol 125 No 4 at 7.

mandatory detention of asylum seekers was of “grave concern”.

The UN Human Rights Committee itself, on the last occasion it commented on Australia's periodic report on compliance with the ICCPR, said that Australia's rejection of the Committee's view in *A v Australia* “undermines the state party's recognition of the Committee's competence under the Optional Protocol to consider communications”.⁴¹ The Committee has not had an opportunity since to consider Australia's compliance because Australia did not submit its next report, due in 2000, until July 2007.

1.3 Human rights NGOs

1.3.1 Internationally

NGOs' information about the internal affairs of states is important to under-resourced UN bodies. In establishing the NGO Informal Regional Network (UN-NGO-IRENE), the UN recognized “the importance of non-governmental organizations worldwide in achieving a just, balanced, effective and genuine involvement from all regions of the world, and in their evolving relationship with the United Nations”;⁴² in 2007, 2719 NGOs had consultative status with the UN's Economic and Social Council (ECOSOC).⁴³ The increasingly large and influential presence of NGOs in the UN is, however, raising important issues of identity and accountability⁴⁴ which, although arising in that context, are indicative of issues that NGOs are facing around the world (see further 1.4.1 below).

Calnan points out that while international law sees an NGO as usually established by law, and active in at least two nation states that are party to a treaty,⁴⁵ a human rights NGO has “an even broader definition . . . an entity is a human rights NGO as long as its ‘private’ character is unquestionable, and its work is guided by the same idea of human rights as set out in international human rights law”⁴⁶.

Although Calnan suggests that the distinctive characteristic is adherence to the human rights set out in international human rights law, he goes on to agree with Steiner's view⁴⁷ that it matters little whether the human rights standards that guide an NGO are from international human rights law or domestic law.

Charlesworth identifies a role for international human rights NGOs in ensuring that treaty body members have “[m]ore ‘hard’ information . . . to question the Australian government representatives, to make it a more testing and more meaningful exchange” than the

41 Human Rights Committee, Concluding Observations: Australia A/55/40 24/7/2000.

42 Economic and Social Council ECOSOC Decision 2002/225.

43 <www.un.org/esa/coordination/ngo/>

44 Jem Bendell, *Debating NGO Accountability*, United Nations Non-Governmental Liaison Service (UN-NGLS), Geneva, 2006 at 48.

45 S. Calnan *In the Trenches: A Comparative Analysis of the Nature and Effectiveness of the Mobilisation of Law by Domestic Human Rights NGOs in the United States Britain and Germany* (Unpublished SJD Thesis, UNSW Faculty of Law, 2004), citing Olz, M.A., *Non-Governmental Organisations in Regional Human Rights Systems* (1997) 28 *Columbia Human Rights Law Review* 308 at 313, 317, and Article 1 of the *European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations*.

46 *ibid.*, at p320.

47 *ibid.*, citing Steiner H. J., *Diverse Partners: Non-Government Organisations in the Human Rights Movement*, Harvard Law School Human Rights Program, Cambridge Mass, 1991 at p70.

“exceptionally polite” and “very self-congratulatory exchange” that generally takes place.⁴⁸

Internationally, human rights NGOs:

. . . commonly identify their primary goals as monitoring and reporting of government behaviour on human rights, particularly violations, building pressure and creating international machinery to end the violations and to hold governments accountable . . . [they] devote substantial resources to human rights promotion and protection . . . [they] aim to be independent both of government and of partisan groups seeking political power . . . [but] the proliferation of human rights NGOs since the mid-1970s makes it almost impossible to categorize them.⁴⁹

1.3.2 Human rights NGOs In Australia

The term ‘NGO’ is reasonably well understood in the Australian context. The Institute of Public Affairs, for example, treated NGOs as a category of ‘civil society organisations’ along with charities and not-for-profit organisations⁵⁰ and, in its Report to the Prime Minister’s Community Business Partnership,⁵¹ defined NGOs as ‘non-profit groups that combine resource mobilization, information provision, and activism to advocate for changes in certain areas’⁵². The IPA drew “[n]o distinction . . . between different sorts of NGOs, whether incorporated or not, or whether an entirely domestic or a local affiliate of an international NGO [and so included] as NGOs business, industry, and professional associations, trade unions, ‘think-tanks’ as well as citizen and community organisations [but not] [a]cademic and research organisations . . . because their primary purposes are not those of ‘resource mobilization, information provision, and activism’ ”.⁵³

The Australian Government describes NGOs that are active in the field of human rights by reference, in part, to their relationship with government:⁵⁴

Some [non-government organisations (NGOs)] focus exclusively on specific human rights issues, whereas others have broader interests which inevitably encompass human rights. Other NGOs focus on discrete areas such as the rights of women, children or Indigenous peoples.

There are many NGOs in Australia that work cooperatively with the Government in enhancing human rights by providing a range of support services, such as: food and shelter for the homeless; support for people with disabilities; refuges for women who are victims of domestic violence; AIDS support services; community legal centres; and community health care.

Other private bodies assume an advocacy role in the protection and promotion of

48 Charlesworth, H, “The UN treaty-based human rights system: an overview” in Pritchard, S (ed), *Indigenous Peoples, the United Nations and Human Rights*, Sydney, Zed Books and the Federation Press, 1998 at 70.

49 Felice D Gaer ‘Reality check: human rights non-governmental organisations confront governments at the United Nations’ (1995) 16 *Third World Quarterly* 389 at 394-395.

50 Fox, R., *Promoting Freedom and Community Civil Society Organisations in Australia*, IPA Backgrounder Vol 18/2 May 2006 at 5.

51 Gary Johns and John Roskam, ‘The Protocol: Managing Relations with NGOs. Report to The Prime Minister’s Community Business Partnership’ The Institute of Public Affairs April 2004 at 5.

52 *ibid*, citing Spar, D.L. and La Mure, L.T., *The Power of Activism: Assessing the Impact of NGOs on Global Business* (2003) 45(3) *California Management Review* 78, at p 79.

53 Johns and Roskam, at note 51 above, at p5.

54 *Australia’s National Framework For Human Rights: National Action Plan*, Commonwealth of Australia 2005 at p 7.

human rights, seeking to affect change through lobbying Governments on human rights issues. As their names imply, NGOs are independent of governments and therefore do not always share the same views as national governments or international bodies such as the UN.

A different approach is to classify NGOs according to the focus of their work:

. . . there are human rights groups whose core mandate is the promotion and protection of human rights, as defined internationally. They clearly self-identify as human rights groups first and foremost. These groups tend to be internationally networked, to have consultative status at the United Nations, or to be affiliated with a group with such status . . .

Beyond this “classic” form, there are a range of other groups with varied connections to human rights. In a second category are “equality” NGOs, whose work is focused around the equality claims of a specific marginalized community, where the community is defined around an aspect of identity, such as gender, sexuality, ethnicity, disability, or age . . .

In a third category are groups whose core mandate is something other than “human rights,” but where the group sees human rights as either a sub-issue within their broader mandate, or a way of characterizing their work. This covers a broad range of very different groups, from those dealing with issues such as democracy or development, to single issue groups, such as campaigns against land mines or plastic bullets, or for adequate housing. Groups dealing with the needs of victims, or ex-prisoners, or refugees, can be included in this category.

The authors of this apparently neat categorisation refer, however, to “the proliferation of groups who could be described in some sense as ‘human rights NGOs’ and the . . . difficulties of defining what constitutes a human rights NGO”.⁵⁵

Consistently with this diversity, Australia human rights NGOs operate at all levels in society and across all sectors, engaging in advocacy, education and training, and research. Some are concerned with a special interest, perhaps only of the moment, while others address systemic issues and may have been doing so for decades. In a 2003 draft report⁵⁶, the International Council on Human Rights Policy said of NGOs that are active in the field of human rights:

Some organisations are extremely large, others have a handful of staff or no staff at all. Some manage widely flung international networks, others are highly local. Some have quite simple functions, while others engage in activities that are highly complex or technical. Some generate considerable resources, while others operate with tiny budgets and incomes. These disparities are very evident within civil society organisations, including human rights NGOs, many of which campaign or lobby to bring about change, though by no means all, since some exist to bring or provide advice or services to people.

However the diversity of human rights NGOs might be categorised, their common features are

55 C Bell and J Keenan, ‘Human Rights Nongovernmental Organisations and the Problems of Transition’, (2004) *Human Rights Quarterly* 330 at 336-337.

56 International Council on Human Rights Policy, *Deserving Trust: Issues of Accountability for Human Rights NGOs*, Geneva 2003; a final report has not been produced.

clear:

Despite the difference in size, power, funding and mandate, a common feature among many [human rights] NGOs is their desire to attempt to influence government policy”.⁵⁷

Recognising this, the Australian Foreign Affairs Minister, Alexander Downer observed “that governments and NGOs have different but complementary roles. The special capacity for witnessing and advocacy which rests with NGOs cannot easily be replicated by government”.⁵⁸

1.4 Characteristics of the NGO environment in Australia

1.4.1 The changing relationship between NGOs and the State

The diverse identity and wide ranging activities of NGOs, and the freedom with which they form and operate, have been accepted features of a democracy, and reflective of a substantial commitment in Australia over time to the human rights of free assembly, free speech and political participation. But in Australia and internationally, the role that NGOs have is changing, particularly in their relationship with the state.

In 2004 the International Council on Human Rights Policy (ICHRP) reported that:

. . . human rights NGOs have begun to reposition themselves in relation to the state. The latter remains the principal target of human rights advocacy because it is responsible for committing most human rights violations and carries the greatest and most direct responsibility, under international law, for protecting human rights. It can be an ally as well as an adversary, nonetheless, and various forms of co-operation have emerged between civil society and government in recent years, particularly in countries where governments have formally integrated human rights principles into their domestic law, and their domestic and international policies.⁵⁹

This recent realignment can mitigate the oppositional nature of NGOs’ human rights advocacy. The ICHRP warns that:

. . . the relative success of campaigners in ‘mainstreaming’ human rights principles conceals an obvious danger. States do not cease to breach their obligations under international conventions merely because they have signed and ratified them, and many continue to violate or deny rights to some of their citizens and non-citizens. Human rights NGOs therefore need to remain vigilant and identify violations by official institutions even while co-operating with them to improve their capacity.

Similarly the increasingly legal character of human rights can affect the way NGOs relate to the state :

The unwillingness of many human rights organisations to get involved in the raw work of political advocacy, particularly as it is conducted by many mass social protest

57 Rana Lehr-Lehnardt ‘NGO Legitimacy: Reassessing Democracy, Accountability and Transparency (2005) Cornell Law School LLM Papers Series, Paper 6 at 4, available at <<http://lsr.nellco.org/cornell/lps/clacp/6>>.

58 A Downer ‘Strengthening Australia’s Human Rights Credentials’ address to a Forum on Australia’s Human Rights Obligations for Human Rights Day 10 December 1996.

59 International Council on Human Rights Policy, *Enhancing Access to Human Rights*, Switzerland 2004 at 44, accessible at <http://www.ichrp.org/paper_files/123_p_01.pdf>.

movements, is often ascribed to the fact that they see themselves as non-political and objective, and thus *au-dessus de la mêlée* [above the fray]. This attitude is somewhat reinforced by the legal character of much human rights thinking, which distances the approach of some human rights organisations from forms of community struggle that tackle multiple social problems and use different approaches to do so.⁶⁰

There are, as well, external factors, largely driven by the state, that are affecting the nature of NGOs operations. A significant development in Australia has been the move from grant funding of NGOs' by government to a contractual model of 'purchaser-provider'. This arrangement unambiguously characterises an NGO as a service deliverer for government. No longer is an NGO funded by government as part of the state's commitment to democratic pluralism, and an NGO can scarcely afford to take an oppositional role in relation to the state.

The phenomenon of conditional contractual funding was illustrated by Eric Sidoti, in a review of the impact of the purchaser-provider model on the operation of NGOs in Australia. Sidoti reports that conditions imposed on the Federal Government's funding contract with the Australian Council of Social Service (ACOSS) include 24 hours advance notice of any media release, two weeks advance notice of submissions, and a government veto over material containing departmental facts and figures.⁶¹

In this environment, government is often hostile to the expression of non-governmental views, and will oppose the use of public funds to support a dissenting voice. It was reported, for example,⁶² that the Federal Attorney General, Mr Ruddock, declined to fund the national conference of community legal centres because it was "inappropriate for Australian Government funds to be directed to the support of campaigns against legislation enacted by the Parliament of Australia". Mr Ruddock was reported as seeing the conference's invitation to the President of the Australia Council of Trade Unions to speak as "blatant politicisation of community legal centres.". He was reported as saying "The issue is subsidising people to go and listen to a political campaign", and that "centres must focus on serving clients, not running private political agendas".⁶³

The change in government's attitude to NGOs in Australia – from recognising their legitimate role in a democracy to condemning them for politicking – has been analysed by Joan Staples in the context of 'political choice theory'.⁶⁴ "Public choice theorists reject the pluralist concept of many voices in society debating public policy to develop a consensus . . . [and] any advocacy role for NGOs because they are seen to interfere with the marketplace and are predatory".⁶⁵

In addition to the purchaser-provider model and its associated restrictive funding conditions, Staples identifies a number of "silencing methods" that are part of what she identifies as a determined, philosophically-driven, move to control NGO activity: de-funding, forced amalgamations, confidentiality clauses, taxation measures, outsourcing, and electoral

60 *ibid* at 45.

61 Eric Sidoti 'Australian Democracy: Challenging the Rise of Contemporary Authoritarianism', *Catholics in Coalition for Justice and Peace*, Sydney 2003 at 17, at <<http://www.hrca.org.au/CCJP.htm>>.

62 David Marr, 'Ruddock snubs legal centres', *Sydney Morning Herald*, August 2, 2006.

63 *ibid*.

64 Joan Staples, 'NGOs out in the cold: The Howard Gov policy towards NGOs', Discussion Paper 19/06, Democratic Audit, Canberra, June 2006 at <www.democratic.audit.anu.au>.

65 *ibid* at pp4-5.

amendments.⁶⁶

A common criticism of NGOs is that they are unrepresentative and unaccountable,⁶⁷ a view that, in Australia, has been described as containing “a strong ideological under current”.⁶⁸ There has been a longstanding resentment by governments concerning the role of NGOs in the United Nations,⁶⁹ and there is a “feeling that NGOs are getting away with too much, making too much of a splash, causing too much heartache”, and that they “have grown far too big for their Doc Martens”.⁷⁰ There is now a proposal to develop an International Organization for Standardization (ISO) standard (ISO 26000) on social responsibility for NGOs.⁷¹

In response to the ‘accountability’ criticism, NGOs say that they do not operate out of self-interest or for profit, and represent ideals of human rights and social justice that are marginalized by states.⁷² The type of ‘accountability’ NGOs are said to lack is the type of accountability that elected representatives have to a constituency, arguably an expectation that misunderstands – perhaps wilfully – the role that NGOs play in democracy.⁷³ The ideological undercurrent to the accountability attacks on NGOs is perhaps apparent when it is remembered that “the really serious problems of organisational accountability exist elsewhere, in business and government . . . Corporations, government and intergovernmental bodies are much more powerful than NGOs, and affect many more people”.⁷⁴

Staples suggests that calls for NGOs to be more accountable, by engaging in restructuring and internal governance reforms, miss the point. The challenge, while structural in part, should be recognised as essentially a political one. For Tony Hill, the question beyond engaging in governance reforms in the name of accountability is whether “[accountability] initiatives could serve merely to undermine NGOs’ useful and largely accepted role in holding business and government accountable for their actions.”⁷⁵

This analysis of NGOs’ situation has important implications for the performance of Australian human rights NGOs, discussed in Chapter 5 below.

1.4.2 The absence of a national human rights NGO

A distinctive feature of the Australian human rights environment is that, atypically for a Western democracy, there is no national human rights NGO.

National human rights NGOs are a feature of most Western democracies. They provide

66 Staples, at note 64 above, at pp 7-14; and see John Butcher, ‘Government, the Third Sector and the Rise of Social Capital’, Centre for Research in Public Sector Management, October 2005; Sarah Maddison and Clive Hamilton ‘Non-government organisations’ in C Hamilton and S Maddison (eds), *Silencing Dissent: How the Australian government is controlling public opinion and stifling debate*, Allen & Unwin, Sydney, 2007; Sarah Maddison, Richard Deniss and Clive Hamilton, *Silencing Dissent: Non-government organisations and Australian democracy*, The Australia Institute, Discussion paper 65, 2004.

67 see eg Johns and Roskam at note 51 above.

68 Butcher at note 66 above, at p 10.

69 see Gaer at note 49 above at p402-403.

70 Martin Mowbray ‘War on Non-Profits; ‘NGOs: What do we do about them?’ (2003) 30 Just Policy 3 at 3.

71 ISO Working Group on Social Responsibility, ‘Developing the Future ISO SR 26000’ Briefing Paper, March 2007 at <http://topics.developmentgateway.org/globalization/rc/ItemDetail.do?itemId=1094747>.

72 see, eg, Deserving Trust: Issues of accountability for human rights NGOs, at note 56 above.

73 Staples, above note 64, at pp 6-7.

74 Bendell, *Debating NGO Accountability*, at note 44 above, at 75.

75 Tony Hill, ‘Preface’, *ibid* at vii-viii.

information, support and expertise to the many NGOs working locally or in sectors. As well, they engage in research, education, litigation and policy development, and deal directly with government. National human rights NGOs are committed to the development of an effective human rights ethos or culture in their own countries. An organisation such as the Committee on the Administration of Justice (Nthn Ireland) has as its object, for example, “ensuring that the government complies with its responsibilities in international human rights law”, and the Scottish Human Rights Centre explains its role by stating that “as our country enters a new millennium . . . it is vital that if there is to be progress, human rights are placed at the centre of development of society”.

In Australia there is no such national non-governmental human rights organisation, although there are NGOs which undertake some aspects of this work, usually addressing human rights issues that arise for a particular group in society, such as indigenous peoples, women, young people, and people with disabilities.

Some NGOs operate nationally in the area of human rights generally. They include:

Amnesty International Australia (AIA), a section of Amnesty International that conducts research, campaigns and fund raising to promote human rights in the Asia Pacific region, including Australia.

the Australian Civil Liberties Union (ACLU) which comments and campaigns in Australia on issues concerning civil and political rights such as those set out in the International Covenant on Civil and Political Rights. It campaigns for law reform, gives general advice to the public and publishes a guide to civil and political rights.

the Australian Forum for Human Rights Organisations (AFHRO) which is a network that convenes only to co-ordinate its member organisations for their twice yearly consultations with the Commonwealth Department of Foreign and Affairs and Trade.

the Australian Human Rights Centre (AHRC) which is an inter-disciplinary research and teaching centre at the University of NSW, facilitating and publishing scholarly research on human rights, and providing education and training courses.

the Council of Australian Human Rights Agencies (CORHA) which is an association of some of the statutory authorities in Australian States and Territories that have been established principally to address issues of discrimination, through education, and receiving and resolving complaints.

the Human Rights Alliance of Australia (HRAA) which is an association of NGOs and activists, based in Victoria, working to promote human rights among non-government organisations and the community.

the Human Rights and Equal Opportunity Commission (HREOC), Australia’s largest, most active and most widely known national human rights organisation, which is an independent statutory authority, established by Commonwealth legislation and funded by the Commonwealth Government.

the Human Rights Council of Australia (HRC) which is a private NGO with limited individual membership by invitation. It operates as a human rights think tank, producing papers and developing projects to promote human rights in Australia and internationally.

New Matilda's Human Rights Act for Australia Campaign Association, which is a campaign for a federal statutory Human Rights Act that is run by 'New Matilda', an online magazine and policy portal.

Rights Australia which campaigns for protection of human rights in Australia through commentary, projects and the provision of public online data and resources.

Some NGOs operate nationally but focus on the legal dimensions of human rights, such as:

Australian Lawyers for Human Rights (ALHR) which is network of Australian lawyers who promote the practice of human rights law in Australia through training, information, submissions and networking.

the *Castan Centre for Human Rights Law* at Monash University which engages in research, education, advice and consultancies focussing in human rights law.

the *Human Rights Legal Resource Centre (HRLRC)* which coordinates collaboration among lawyers and academics to provide human rights law expertise and resources to advocates and NGOs.⁷⁶

A large number of NGOs work nationally in their area of concern or expertise, informed by, using and promoting human rights, some of which are:

A Just Australia, which is a membership organisation that campaigns for just policies and programs for refugees and asylum seekers through public awareness activities, lobbying, public events & meetings, research and analysis, and newsletters.

the *Australian Council of Social Service (ACOSS)*, the peak council of the community services and welfare sector, which aims to reduce poverty and inequality through developing and promoting public policy, and supporting non-government organisations that provide assistance to vulnerable people in Australia.

the *National Association of Community Legal Centres (NACLC)*, which is the association of state community legal centre organisations in Australia.

the *Federation of Ethnic Communities' Council (FECCA)*, which is an Australian national peak body that promotes multiculturalism, community harmony and social justice through community education, advocacy for Australians from diverse cultural and linguistic backgrounds, and for human and cultural rights.

People with Disabilities (PWD), which is a national peak organisation for advocacy for people with disabilities, engaging in information, advice and referral services, advocacy for reform, sector coordination, research, training & education.

the *Public Interest Advocacy Centre (PIAC)*, which uses human rights principles in its legal practice, and conducts public education campaigns and training programs on human rights.

the *Refugee Council of Australia (RCA)*, which provides support to refugees and to its members, and engages in policy work, training and community education.

Women's Rights Action Network Australia (WRANA), which is a feminist human-rights organisation, that engages in advocacy, education and documentation projects.

76 see P Lynch 'Harmonising International Human Rights Law and Domestic Law and Policy: The Establishment and Role of the Human Rights Law Resource Centre' (2006) 7(1) *Melbourne Journal of International Law* 225.

Chapter 2 Research methodology

2.1 Introduction

This chapter sets out various aspects of the methodology used for the research, and some observations on particular aspects of the research.

2.2 Methodology

2.2.1 Research aim and purpose

The aim of the research was to identify the challenges that Australian human rights NGOs face in doing their work, to understand their attitudes to human rights, and to identify areas in which they believe their work could be enhanced.

An underlying purpose of this aim was to gather information that would assist in the longer term development of strategies to improve human rights protection in Australia by strengthening NGOs and enhancing their ability to undertake human rights activities.

2.2.2 Research scope

The research was designed along three lines of enquiry, the first concerned with the current capabilities of Australian human rights NGOs and the second two directed at the NGOs' attitudes on issues relevant to effective human rights advocacy.

The first line of enquiry was designed to identify the skills and resources that Australian human rights NGOs have, and those that they see as desirable for using and promoting human rights principles in Australia. But the research design did not assume that NGOs always choose to use and promote human rights principles, or even that they possess sufficient knowledge to make that choice. Therefore, the second line of enquiry went beyond skills and resources, to research awareness of and attitudes in relation to human rights principles and language among NGOs, and the interplay between human rights and social justice in NGOs' thinking and practice.

With a view to possible long term strategies for improving NGOs' capacity to engage in effective human rights advocacy, the third line of enquiry tested the acceptability among Australian NGOs of some form of national human rights entity or capability. NGOs were asked whether and in what ways they anticipated such a national approach might assist them in their work.

2.2.3 Definition of NGO

The research took the broad and inclusive approach to NGOs that is suggested by the international and Australian definitions of NGO discussed at 1.3 above. A related issue is whether it is necessary for an organisation to identify itself as a "human rights NGO" for it to be designated as one. For the purposes of this research self-identification was not considered necessary, as long as the NGO reflected accepted criteria for a human rights NGOs described

at 1.3 above. The selection of NGOs to be surveyed is discussed further below (at 2.2.6).

2.2.4 Collecting data

The research was intended to not only measure capabilities and attitudes, but also to report how Australian human rights NGOs operate, and how they believe their work could be improved in the future. Accordingly the research combined quantitative and qualitative research methods.

NGOs' capabilities were surveyed through a series of detailed questions about their objectives, governance, clients, staffing, funding and planning (see **Appendix 1** Survey Instrument, Parts A and B).

The research was designed to survey NGOs' for their perceptions of challenges faced by human rights advocates, and for their attitudes towards a national human rights capability (see **Appendix 1** Survey Instrument, Parts B and D). By responding to questions on the two issues together, NGOs were able to relate the challenges they face with possible approaches to meeting them.

The survey questions that tested attitudes to and understanding of human rights also tested attitudes to and understanding of the concept of 'social justice', and asked whether and how the two ideas are related. This approach reflected ALHR's experience that many human rights organisations in Australia rely on the concept of 'social justice' instead of or as well as that of human rights.

In the second half of 2003, the project team surveyed a sample of Australian NGOs engaged in human rights work in Australia (selected according to the criteria set out in 2.2.6 below and listed in **Appendix 2**) and interviewed a number of individuals known to be experts in issues of human rights in Australia (listed in **Appendix 3**). Consequently the report is based on data from a survey sent to 252 organisations, and interviews with 42 individuals ('expert commentators').

The interviews were conducted by volunteers according to an outline prepared by the project, and were recorded by hand before being transcribed electronically. The survey was posted to respondents in hard copy and the results were received in hard copy. The data were entered into Microsoft Access® and then exported to the statistical and data management software SPSS® for analysis.

2.2.5 Ethics

The research was approved by the UNSW Human Research Ethics Committee (HREC). It was carried out in accordance with the general conditions stated in the National Statement on Ethical Conduct in Research Involving Humans, the approved protocol, and conditions stated by HREC as a condition of ethical approval. The *Participation Information Statement* and *Acknowledgement* are at **Appendix 3**.

2.2.6 Survey respondents

The survey respondents selected were not limited to those organisations identifying themselves as human rights NGOs. Because a human rights NGO may not necessarily identify itself as such (see 2.2.3 above), the project relied on a combination of name, reputation, known activity,

and membership of associations or networks to draw up the most comprehensive list possible of NGOs that address or are concerned with issues of human rights in Australia.

Limiting the survey to organisations that effectively 'self-identify' as human rights organisations was also insufficient for the project aim of assessing the extent to which human rights standards inform the respondent NGOs' work generally. For this reason, social service organisations, known to more commonly identify themselves as concerned with 'social justice', were included in the range of organisations to be surveyed.

Respondents therefore included:

- NGOs that identify explicitly themselves as human rights NGOs (for example, the Human Rights Council) and by implication (for example, the Australian Civil Liberties Union)
- organisations that have registered an incorporated name that includes the phrase 'human rights'
- NGOs that are invited by the Federal Government to take part in periodic human rights consultations (with the Attorney General, and with the Department of Foreign Affairs and Trade)
- NGOs that are members of the Australian Forum for Human Rights Organisations
- NGOs that are members of the National Association of Community Legal Centres
- members of the Federal, State and Territory Councils of Social Service.

As an effort to survey 'human rights NGOs' this approach was successful: as is reported below (at 3.3.5), almost all respondents reported that their work is concerned, if not explicitly then at least in some way, with addressing issues of human rights.

2.3 Observations on the data

2.3.1 Response rate

In the second half of 2003, 252 surveys that were distributed. 60 usable responses were returned after steps were taken to maximize the response rate.⁷⁷ A response rate of 23.8% was achieved.

Postal surveys typically suffer from low response rates,⁷⁸ and a response rate to a mail survey can lead to a risk of non-response error.⁷⁹ Respondents cooperate with mail surveys when social costs are low, expected benefits exceed expected costs, and researchers are able to create a feeling of trust.⁸⁰ The response rate to the questionnaire for this survey suggests that

⁷⁷ see eg Cui, Wei *Reducing error in mail surveys* (2003) 8(18) Practical Assessment, Research & Evaluation, at <http://pareonline.net/getvn.asp?v=8&n=18>

⁷⁸ *ibid.*

⁷⁹ R. Hall *Applied Social Research: A Guide to the Design and Conduct of Research in the 'Real World'* (Ralph Hall, UNSW School of Social Sciences and Social Policy, Sydney, 2006) p120.

⁸⁰ D.A. Dillman *Mail and Telephone Surveys: The Total Design Method* (New York, Wiley, 1978) cited in W. Lawrence Neuman *Social Research Methods: Quantitative and Qualitative Approaches* (5th ed) (Allyn & Bacon, Boston, 2003) p288.

some potential respondents did not respond because they did not expect benefits from the research to exceed the value of the time needed to fill in the questionnaire, and there may have been a lack of trust in the researchers and/or a feeling that participation in the study may have had low social value. This would be consistent with the very low level of contact in Australia to date between human rights researchers and human rights NGOs.

Despite the risk of non-response error, overall results of the research can be accepted as valid and reliable in a cohort of like organisations, and are supported by triangulation of the survey results with the interview results. The interviews largely contained qualitative data, while the survey results contained both quantitative and qualitative data. Triangulation of different forms of measurement for the same variable generally increases the validity and reliability of research results.⁸¹

As a result, the researchers are confident in the overall reliability of the results of the project set out below.

2.3.2 Terminology

The survey used terms such as ‘campaigns’, ‘lobbying’, ‘networking’, ‘secretariat’ and ‘social justice language’. In doing so the project relied on the extensive experience of its members and advisers in the language and practices of NGOs in Australia.

While there remains the risk that different understandings of such terms informed the survey responses, the common context within which the respondents operate (Australian non-governmental non-profit sector) significantly minimises that risk.

⁸¹ Neuman, *ibid* at p 138.

Chapter 3 Capabilities of NGOs in Australia

3.1 Introduction

As noted above, the underlying purpose of the research is to gather information that will assist in the development of strategies to improve human rights protection in Australia by strengthening NGOs, and enhancing their ability to undertake human rights activities. To that end it is essential to have a sound understanding of the way in which NGOs' operate.

In asking NGOs about their structure and planning, the survey focussed particularly on their organisational design. Observations on design and structure are then the basis for a discussion of organisational culture, of those shared values and norms – implicit or assumed – that control how members of an organisation interact with each other and with their constituency and stakeholders. The organisational culture of a human rights NGO includes not only managerial issues but also understandings of the nature of human rights itself⁸².

3.2 Structure and funding

3.2.1 Overview: NGO structure and funding

The picture that emerges from the research is that a human rights NGO in Australia:

- is likely to be reliant on multiple sources of government grant funds
- is likely to have a three year strategic plan developed internally with some external contribution
- is likely to have a strategic plan that has human rights objectives
- is likely to have at least one staff member whose role it is to address the human rights issues that arise in the NGO's work
- is likely to engage in direct service provision, lobbying for reform, and education activities to achieve its human rights objectives
- is likely to see itself as constrained in reaching its human rights objectives principally by insufficient funds and insufficient staff time
- may see itself as constrained in reaching its human rights objectives as well by having to meet competing, new or increased service demands
- may feel constrained in reaching its human rights objectives by conditions on its activities imposed by funders.

⁸² Calnan above at note 45, p114-115

3.2.2 Paid staff with human rights duties

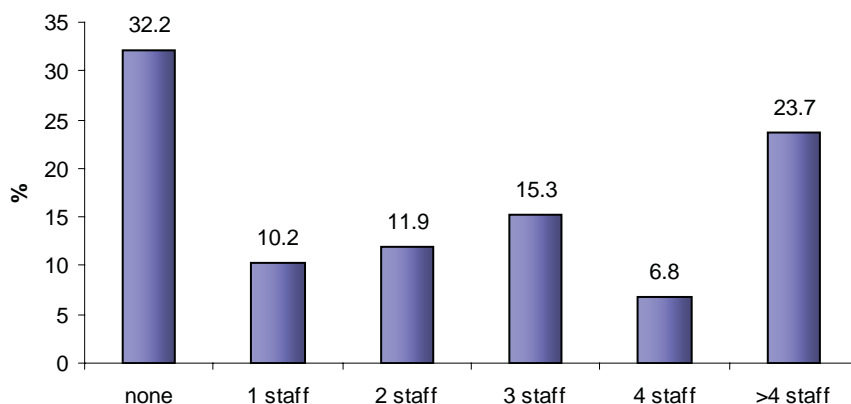
The majority of NGOs have at least one staff member whose role it is to address the human rights issues that arise in the NGO's work.

We asked respondents (q17) how many paid staff members in the organisation are formally responsible – for example, in their job description, duty statement, periodic work plan etc – for addressing issues of human rights.

Almost a third of NGOs (32.2%) answered 'none'. The next highest response was at the other end of the scale: almost a quarter (23.7%) of NGOs have more than four paid staff members formally responsible for addressing human rights issues.

Roughly equal numbers employ one, two, three or four staff with formal responsibility for human rights issues (10.2%, 11.9%, 15.3% and 6.8% respectively).

Paid staff with human rights duties

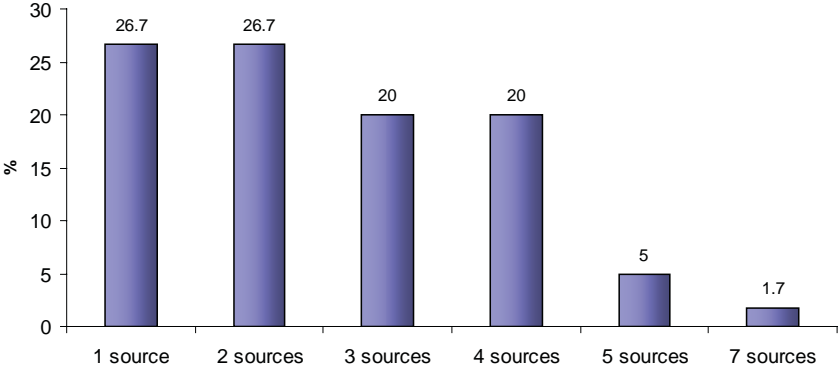


3.2.3 Funding sources

An NGO is likely to be reliant on multiple sources of government grant funds.

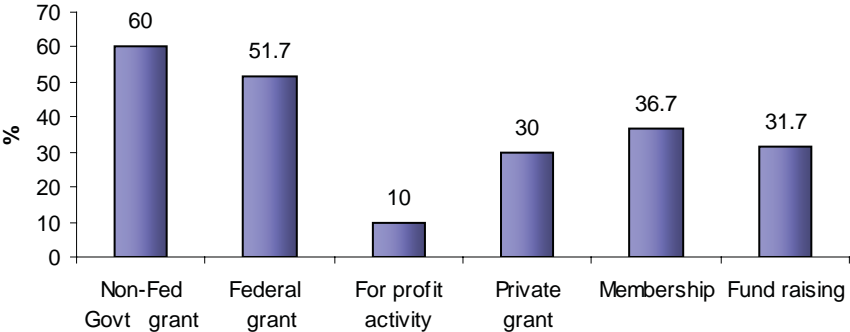
We asked respondents (q18) how the organisation is funded. About a quarter (26.7%) of NGOs have a single funding source, and about a quarter (26.7%) have two funding sources. Almost half have three or more funding sources (46.6%).

Extent to which NGOs have multiple funding sources



The largest two sources of funding for NGOs are government grants: 60% receive grants from State, Territory or local government, and more than half (51.7%) receive Federal Government grants. About a third (30%) receive private grants, for example, from universities and trust funds. Many NGOs collect membership fees (36.7%), and about as many engage in fund raising (31.7%) and receive donations (35%). Only 10% of NGOs engage in 'for profit' activities to fund their operations.

NGOs' sources of funding



3.2.4 Planning for human rights

An NGO is likely to have an internally-developed, three-year strategic plan, that explicitly refers to human rights and identifies specific approaches, such as direct service

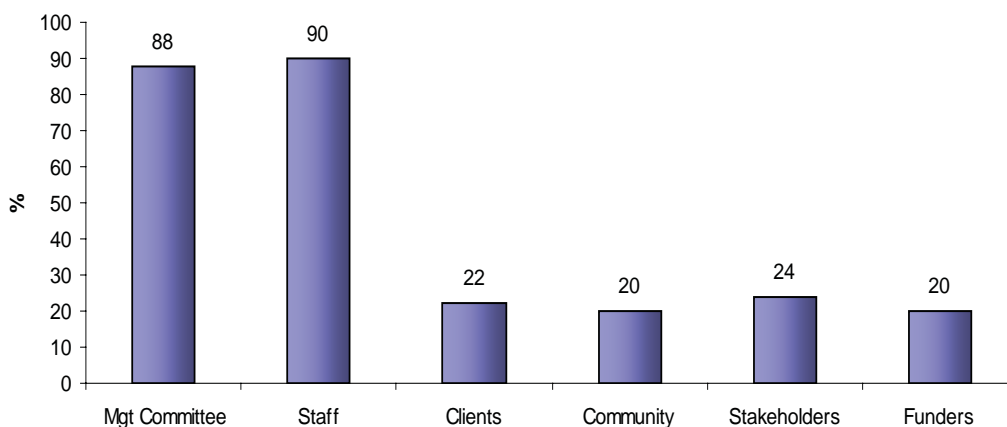
provision, lobbying for reform, and education activities.

We asked respondents (q19-22) about their planning documents. Nearly all (83.3%) have a Strategic Plan, usually for a three year period. The Strategic Plan is developed by staff (90%) and the Board (88%), with involvement in some cases from stakeholders (24%), clients (22%), the community (20%) and funders (20%). 87.5% of organisations reported that their planning documents refer to human rights.

23% of respondents set out their strategies, giving a sample of the approaches that Australia human rights NGOs take to achieving their aims:

- engaging in direct service provision
- campaigning and lobbying for changes to policy
- proposing law reform
- providing legal services
- community education
- community development
- networking with like-organisations
- increasing membership
- increasing funding.

Participants in NGOs' planning



3.2.5 Obstacles to achieving human rights plans

An NGO is likely to see itself as constrained in reaching its human rights objectives, principally, by insufficient funds and insufficient staff time, and in some instances by having to meet competing, new or increased service demands or by conditions on its activities imposed by funders.

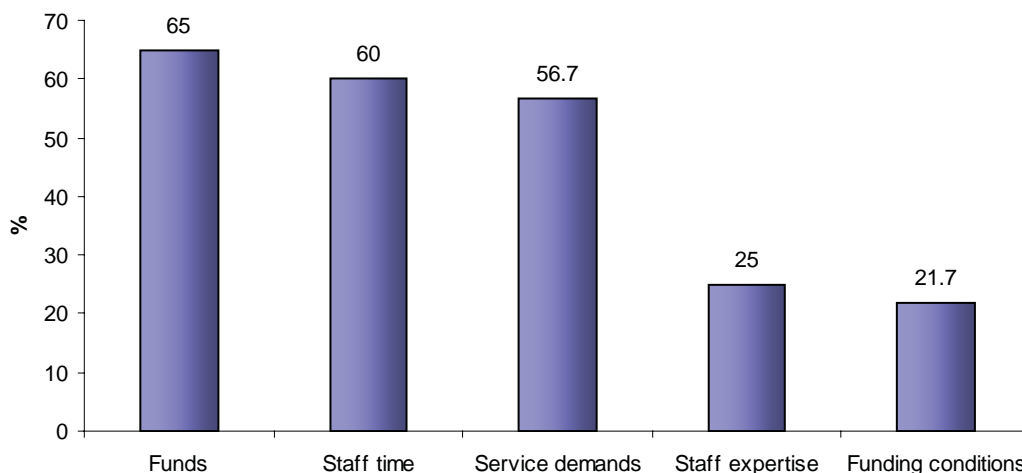
We asked those organisations that reported that their planning documents referred to human rights (see 3.2.4 above) whether there are any constraints that make it difficult for them to achieve their human rights objectives. They were invited to select from a list of possible responses, and to nominate any other.

The most reported obstacle to an NGO's achievement of its human rights objectives is insufficient funds (79.6%). A related but different obstacle for most NGOs is shortage of staff time (73.5%).

The next two most commonly identified obstacles are also functions of inadequate funding: having to meet competing service demands (38.8%), and having to respond to changes to or increases in service demands (30.6%). An obstacle related to the provision of government funds is the imposition of conditions by funders (26.5%).

Some operational factors were identified as barriers, but at quite a low level: each of project management, organisational planning and management, and grant applications and acquittals, were reported as obstacles by fewer than 7% of NGOs.

NGOs' obstacles to achieving human rights



We asked these organisations to rank, in order of importance, a range of circumstances which would help them better achieve their human rights objectives. The most common responses reflected the identified obstacles: more funds, and fewer constraints on management of those

funds. The call for funds was, however, refined to distinguish between a need for recurrent funds (79.6%), and for project funds (57.1%). Related to the desire for fewer constraints on funding (46.9%) was a call for more manageable service demands (6.1%).

Further related to funding was a call for increased resources generally: more equipment (32.7%), better equipment (22.4%), more staff (14.3%) and increased staff expertise (10.2%). Access to what could be called 'sources of influence' was identified as a factor that would help organisations better achieve their human rights objectives: better access to news media, to government bureaucracy, and to parliamentarians (each at 6.1 %). Some organisations (6.1%) saw better support and direction from boards or committees of management as necessary.

3.3 Human rights organisations and activity

3.3.1 Overview: human rights organisations and activity

The research indicates that an Australian human rights NGO is likely:

- to identify achieving 'social justice' as the aim of their organization, often seeing it as interchangeable with achieving of human rights observance.
- to see the general Australian community as their clients, with a significant minority nominating a wide range of different groups as their clients.
- to focus on lobbying and policy submissions as a tactical approach, combining it with individual representation, publication and education.
- to use international human rights standards in their work and have some specific knowledge about these standards, often through having a member of staff whose job is to be knowledgeable on the subject.
- to get their information on human rights from other Australian human rights NGOs or government agencies.
- to share resources within networks.

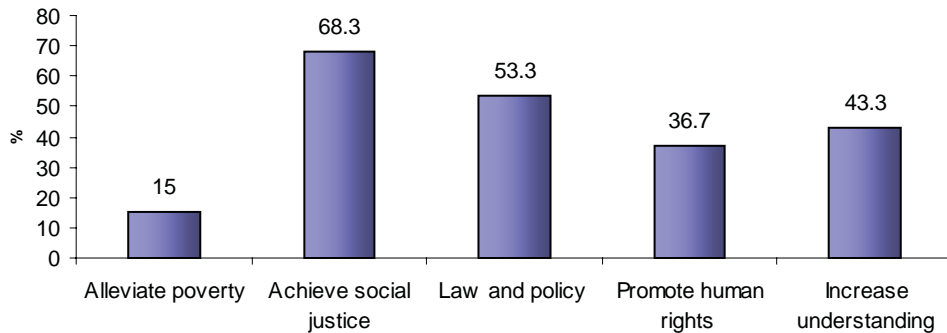
3.3.2 Organisational objectives

An Australian human rights NGO is more likely to identify 'achieving social justice' than 'achieving human rights standards', as its one of its primary objectives.

We asked respondents (q1) to describe their primary objectives, with the option of identifying more than one.

The majority of respondents identified 'achieving social justice' (68.3%) and 'bringing about legislative and policy change' (53.3%) as primary objectives. A significant minority identified 'increasing knowledge and understanding' (43.3%) and 'achieving human rights standards' (36.7%). Only 15% nominated 'alleviating poverty' as a primary objective. About a quarter of respondents described their primary objectives as *both* achieving social justice and achieving human rights standards (27.6%).

NGOs' objectives

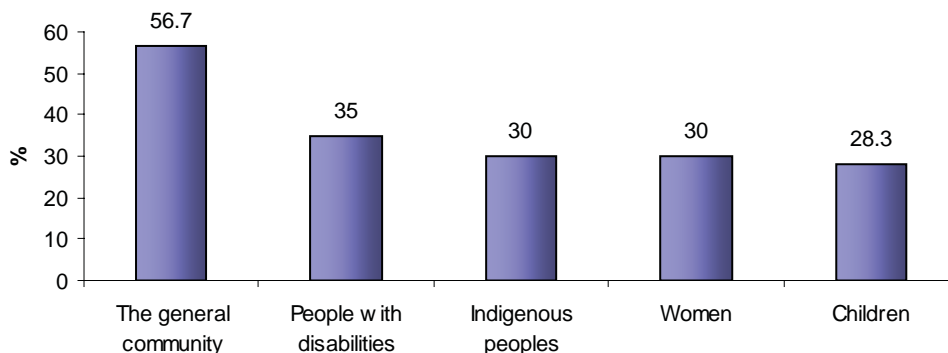


3.3.3 Client groups

An Australian human rights NGO is likely to see the general Australian community as its clients, although a significant minority nominate a wide range of different groups as its clients.

We asked respondents (q2) to describe their clients, with the option of identifying more than one grouping. Most identified 'the general community' (56.7%), and many nominated people with disabilities (35%), indigenous peoples (30%), women (30%), children (28.3%), people with a language other than English (23.3%), and regional, rural and remote communities (23.3%). Some work with refugees, holders of temporary protection visas, and asylum seekers (10%). 15% provide support to other workers such as tenancy workers and community legal centre staff and policy makers.

NGOs' client groups



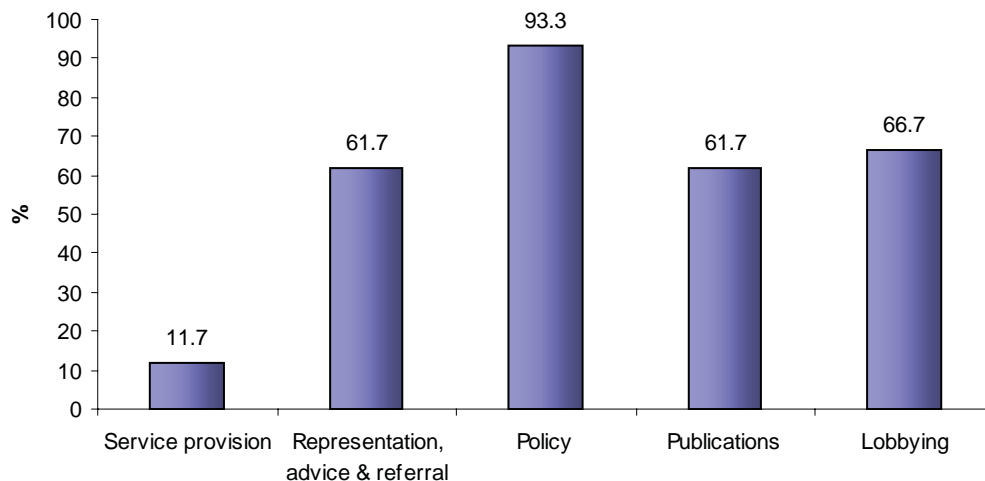
3.3.4 Organisational activities

Australian human rights NGOs are likely to use lobbying and policy submissions as tactics, combining them with individual representation, publications and education.

We asked respondents (q3) to describe their activities, with the option of identifying more than one. Almost all (93.3%) said they make policy submissions and representations. Other significant activities were advice, referral, representation and advocacy for individuals (61.7%), publications (61.7%), political lobbying (66.7%), and the provision of education, training and information through courses and seminars (55.0%). A significant minority engage in campaigns (41.7%).

Only 11.7% are involved in direct provision of material support such as accommodation, food and crisis counselling. Other activities (10% in total) included sector development and networking.

Activities of NGOs



3.3.5 Focus of the organisation's work

An Australian human rights NGO whose work is explicitly directed to issues of social justice is also likely to undertake work explicitly directed to addressing human rights issues.

We asked respondents (q6) whether their work is *explicitly* directed to addressing issues of social justice and, if so, what proportion of their work is so directed. A substantial majority (86.7%) said that their work is explicitly directed to addressing issues of social justice and, of those, 69.2% said that that is the direction of more than half their work.

We asked respondents (q7) whether their work is *explicitly* directed to addressing issues of human rights and, if it is not (q8), whether their work is *related in some way* to addressing issues of human rights. Most respondents (68.3%) said their work is explicitly directed to addressing issues of human rights. Of the 31.7% who said it is not, almost all said that their work is nevertheless related in some way to addressing issues of human rights (94.4%).

We correlated the responses to questions 6, 7 and 8 and found that of the organisations whose work is explicitly directed to issues of social justice, 76% also explicitly focus on addressing human rights issues. The remainder (24%) said that their work is related in some way to addressing human rights issues. No social justice organisation said that their work is not directed towards human rights issues to some extent.

NGOs' focus of work



3.3.6 Use of international human rights treaties and law

A substantial majority of Australian human rights NGOs utilise relevant international instruments or law in their work, with many of those who do not utilise such instruments citing issues of accessibility.

We asked respondents (q9) whether in their human rights work they rely on relevant international instruments (for example, treaties) or human rights law.

A substantial majority (83.3%) said that they rely on international human rights instruments or law in their work. Of those, a large proportion (84%) use international instruments or human rights law as guides to formulating policies and practices, while many use them as indicative of standards they seek to attain (60%) and as tools for lobbying (68%).

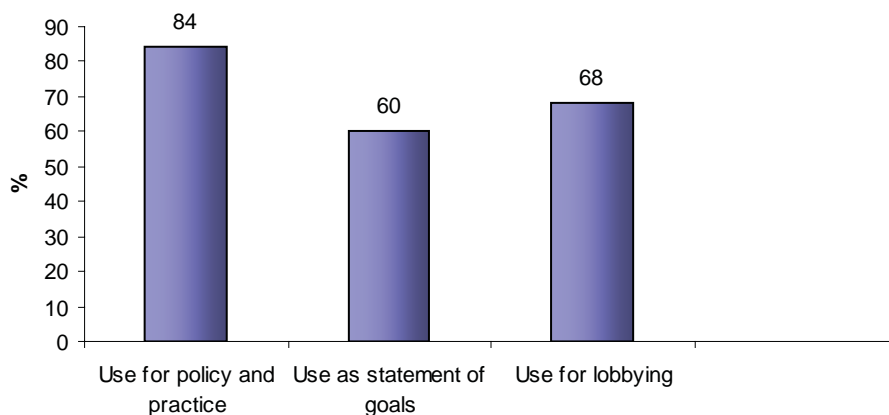
Other uses identified for international human rights instruments and law were as tools for education, and as arguments in legal cases. One respondent commented particularly that they do *not* use international human rights instruments or human rights law in political lobbying as

“these are not persuasive arguments in this climate”.

Of the 16.7% of respondents who do not rely on international human rights instruments or law in their work, some said that they have insufficient time or resources to locate relevant material (37.5%). Similarly, some said that they lack the knowledge (12.5%), or that the materials are inaccessible (12.5%). A quarter said that international human rights instruments or human rights law is not relevant to their work. In additional comments, some respondents said that they work with domestic laws rather than international instruments as most legal work can be carried out “without recourse to international instruments”, and that “local laws prevail”.

We correlated the responses to questions 7 and 9 and found that of the organisations whose work is explicitly directed to addressing issues of human rights, a significant majority (86%) said that they rely on relevant international instruments in their work.

Use of international treaties and law



3.3.7 Working with international human rights standards

An Australian human rights NGO is likely to possess an understanding of international human rights standards and to be able to explain its work in terms of those standards.

We asked respondents (q10) to identify the international human rights standards they address in their work. They were invited to refer to up to five such standards, and the responses were grouped for purposes of reporting.

Almost half the respondents (48.3%) reported recognised human rights standards, either by reference to treaties, such as “ICCPR Art 9” and “ICESCR Art 11.1”, or by description, such as “to be treated equally before the law” and “free speech; free movement within the community”.

More than a quarter (26.6%) reported in terms that equate generally to recognised human rights standards, such as “uphold indigenous culture including language” and “labour standards”.

A few respondents (8.3%) indicated some sense of recognised human rights standards when

they reported that they address rights such as “to be heard within the justice system” and “to be involved in decision making”. Only one response bore no direct relationship to recognised human rights standards: “free legal information, advice and representation”.

3.3.8 Knowledge of human rights in the organisation

There is likely to be, within an Australian human rights NGO, human rights knowledge in at least some level of detail, with this knowledge being most widespread in those organisations identifying ‘addressing human rights’ as a primary objective of the organisation.

We asked (q11) whether anyone in the organisation has it as their job to be knowledgeable about the application of human rights standards to the organisation’s activities. 63.3% of organisations have someone whose job is to be knowledgeable about human rights standards.

We refined this by correlating the responses to q11 with the organisations who, in q1, said that human rights is a primary objective for them. 81.8% of those organisations have someone whose job is to be knowledgeable about human rights standards.

We asked (q12) how respondents would describe *their* knowledge of the human rights standards found in international treaties and conventions (selecting from a range from ‘non-existent’ to ‘detailed’). Only one respondent said that their knowledge is non-existent, while the remainder said they have knowledge ranging from ‘some awareness’ (11.7%) at one end of a scale to ‘detailed’ (26.7%) at the other. In between, 30% said they have ‘some general understanding’ and 28.3% said they have ‘some detailed knowledge’. The answers to this question are problematic: the question asked the person completing the survey to describe *their* knowledge, but there was no control over or identification of that person’s role in the organisation. These responses therefore tell us very little about the organisation’s level of knowledge of human rights standards, but they are useful when combined with responses from q13, described below.

We asked respondents (q13) to rate the knowledge of *other members of the organisation* of the human rights standards found in international treaties and conventions, selecting from the same range of options. No respondent said that the human rights knowledge of other members of the organisation is non-existent. 17.5% said that other members of the organisation have some awareness, 45.6% said there is some general understanding, 17.5% said there is some detailed knowledge, and 19.3% said there is detailed knowledge. While this information is second hand (that is, information from one member of staff about his or her knowledge of the human rights knowledge of other members of staff), experience indicates that the usual interaction between members of an NGO is likely to mean that this information is reasonably accurate.

By combining the responses from questions 12 and 13 we can get a fair picture of the level of knowledge of human rights standards within the whole organisation. For example, the one organisation where the person completing the form has no knowledge does have, among other staff, at least some knowledge, so overall the organisation has some human rights knowledge within it. The combined responses from questions 12 and 13 show that in 6.8% of organisations there is only ‘some knowledge’ of human rights, in 30.5% there is some general understanding, in 28.8% there is knowledge in some detail, and in 33.9% there is detailed knowledge. If we accumulate these figures we see that 66.1% of organisations have human rights knowledge in

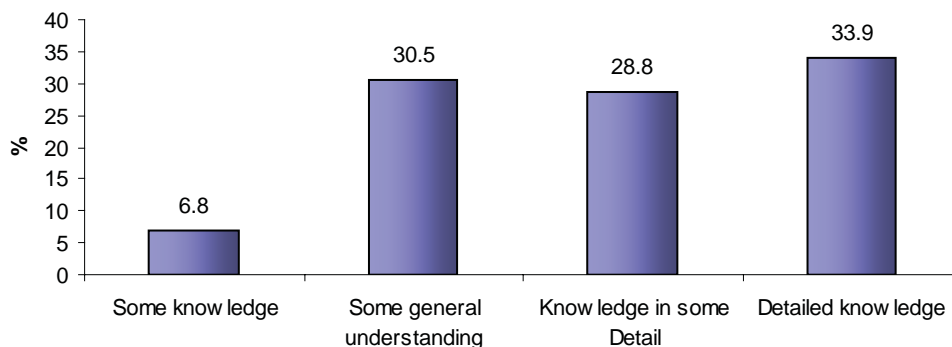
at least some level of detail.

We correlated the combined responses from questions 12 and 13 with organisations who, in q1, said they have human rights as a primary objective. In 27.3% of those organisations knowledge among staff of human rights standards is at the level of 'some general understanding'. 18.2% have human rights knowledge in some level of detail, and 50.4% have detailed knowledge.

Similarly, we correlated the combined responses from questions 12 and 13 with organisations who, in q7, said that their work is explicitly directed to addressing issues of human rights. In 2.4% of those organisations, staff have only some awareness of human rights standards, and in 24.4% knowledge among staff is at the level of 'some general understanding'. In 18.2% of those organisations staff have human rights knowledge in some level of detail, and in 43.9% staff have detailed knowledge.

Among those organisations who, in q7, said that their work is *not* explicitly directed to addressing issues of human rights 82.4% have *at least* some general understanding of human rights standards, and none say their knowledge of human rights is non-existent.

Human rights knowledge in NGOs



3.3.9 Sources of human rights knowledge

Australian human rights NGOs obtain human rights information from external sources, identifying sources such as NGOs, the Australian government and HREOC, and physical and electronic resources.

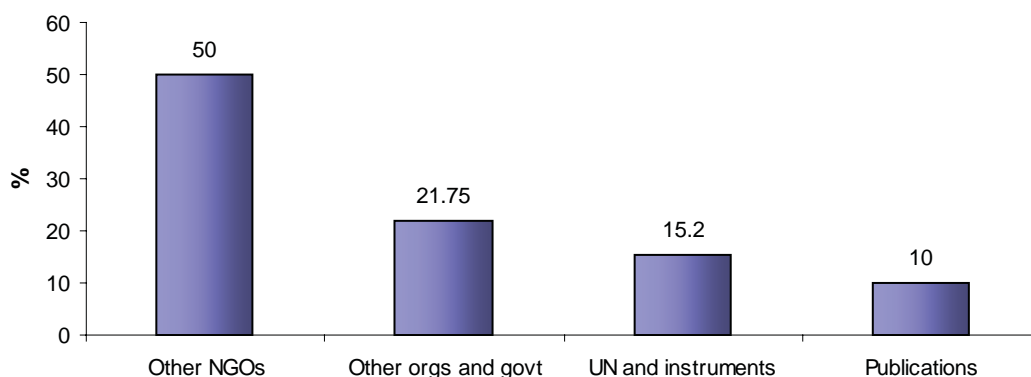
We asked respondents (q14) whether they obtain human rights information externally, and most said that they do (76.7%).

We asked those organisations to describe the “sources and nature of information”, to which they gave multiple answers. The question resulted in answers that treated the word ‘sources’ in two different ways: as the physical origin of the information (for example, HREOC), and as the means of obtaining the information (for example, the internet). The research is therefore not decisive in answering the question, but remains indicative of the ways that NGOs go about finding out about human rights.

The most identified source for human rights knowledge are other NGOs (50%) and other organisations such as government and HREOC (21.7%). Only 15.2% rely directly on UN and international instruments. A few use human rights information from publications ranging from legal databases to articles and reports (10%). 37.5% said explicitly that they obtain human rights information via the internet, although experience suggests that the internet is itself a means of obtaining information from sources such as HREOC and the UN.

Those who said that they do not get their human rights information externally were asked where they would go if they needed to. Most (57%) said they would use the internet and 28.6% said they would rely on HREOC. Other sources included the UN, libraries and publications.

Sources of human rights knowledge



3.3.10 Sharing human rights resources

Many Australian human rights NGOs share resources with other such NGOs, usually through networks of ‘like’ organisations, and most NGOs report that they would find it useful to share resources.

We asked respondents (q15) whether they share any human rights resources (for example, a library, training etcetera) with any other organisation to perform their work. Although many do (60.7%), a significant proportion (39.3%) said that they do not share resources. Of those who do share resources, some volunteered the nature of the organisations with which they share. In every case the resources were shared through networks, among ‘like’ organisations such as community legal centres, refugee organisations, and disability organisations.

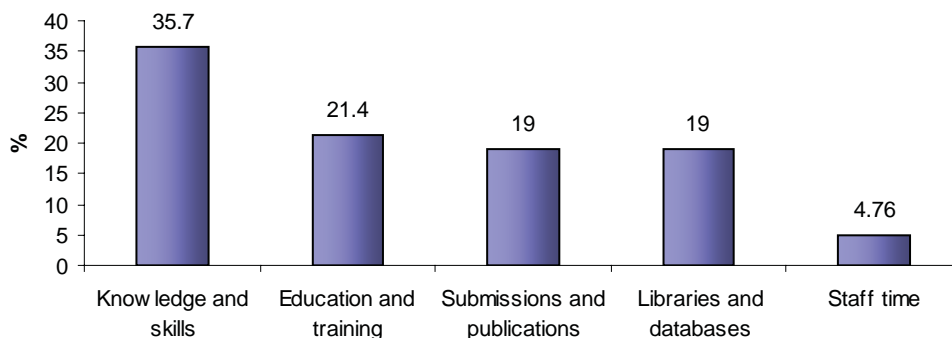
Those who share human rights resources gave multiple responses to identify the types of shared resources, and the responses have been grouped for reporting. Most shared are knowledge and skills, such as individual expertise (35.7%). Other resources are shared in roughly equal proportions: education and training (21.4%), submissions and publications (19%) and libraries and databases (19%). Only 4.76% share staff time.

Of those who said they do not share resources, a few (9.5%) said they don’t need to. Others

said that they are unaware of resources available to be shared (33.8%) or that there are no shared resources available to them (26.3%). Other reasons given include a lack of time and resources, and the specialist nature of the organisation.

We asked respondents (q16) whether they would find it helpful to share with other organisations any resources that give access to relevant international instruments or human rights law. A substantial majority said they would (84.6%). Most of these respondents would find it helpful to share what can broadly be called 'resources', ranging from expertise, training, submissions and databases to office space, procedures, websites and staff time (64.3%). As well, many (36.7%) would like to be able to share knowledge and information such as updates and developments in law, UN conventions, and methods and techniques.

Shared resources



3.4 Analysis

3.4.1 Structure and culture

The research indicates that Australian human rights NGOs are usually non-membership organisations, run by their staff and board but with a high level of accountability to government funders. They are relatively small in staff numbers, but large enough to differentiate staff roles. Most have at least some awareness of international human rights standards, which may be the result of the continuing resistance in Australia to formal domestic recognition of human rights standards, as was the case for the British NGOs studied by Calnan.⁸³

The research indicates that Australian human rights NGOs tend to show aspects of both organic and mechanical structures in their design. Organic structures are relatively non-hierarchical, dispersing decision-making authority throughout the organisation so that staff assume the authority to make decisions as circumstances dictate. They are characterised by loosely-defined rules, with people assuming various roles and continuously acquiring new skills. Such structures ought therefore be more adaptable and sensitive to environmental changes.

⁸³ Calnan above, note 45, at p 47

Mechanical structures – where decision making is centralised, subordinates are closely supervised, and information flows vertically down a clearly defined hierarchy – adapt less well to such change, and are designed to make staff in an organisation behave in accountable and predictable ways.⁸⁴

The not-for-profit nature and usually small-scale of human rights NGOs suggest that they should tend to be organic in their structures and operations. But the research shows that Australian human rights NGOs actually operate in a more mechanical, and consequently less flexible, way. A common phenomenon for NGOs the world over is that the provision of day-to-day social and legal services leaves little time for thinking out longer term problems. This militates against an organisation's flexibility. But the challenge in Australia is due to more than that inherent feature of an NGO; it derives as well from the high proportion of conditional government grants that most Australian NGOs rely on for funding.

The research shows that Australian NGOs are dependent on multiple sources of government funding (see 3.2.3), and that the NGOs see the amount of, and conditions on, this funding as significant limitations on their ability to reach their human rights goals (see 3.2.5). While conditions are imposed for accountability purposes, their effect is to constrain the operational options of Australian NGOs to such an extent that they largely cancel out the organic and flexible characteristics of the network structure. The insidious effect of this dependency on government funding is apparent throughout the following discussion.

3.4.2 Tactics

All NGOs choose a range of tactics to achieve their goals, and Australian human rights NGOs show a high degree of tactical planning. In general they attempt to employ tactics in a planned manner over a period of time to meet their goals: most have three year plans to govern their use and combination of tactics (see 3.2.4). The plans clearly set out their goals so that, in principle, their effectiveness in meeting the goals could be estimated.

Despite this planning, the NGOs seem to adopt a quite narrow range of tactics to pursue their aims. The research was not exhaustive in seeking answers on this issue, and more detailed research would be necessary to draw firm conclusions. Nonetheless, the research does indicate that in their choice of tactics, Australian human rights NGOs concentrate on lobbying, public campaigns, education and publication, with little emphasis on more confrontational tactics – such as strategic litigation, use of international human rights mechanisms, and aggressive use of the news media – that are typical of many human rights NGOs overseas.

A reason for this may be that Australian NGOs lack staffing or expertise, or are not sufficiently developed to show the environmental responsiveness that might, in theory, be expected of their organisational structure. But coupled with Australian human rights NGOs' focus on social justice as an organisational objective (Chapter 4 below), a further reason for this limited range of tactics may be that the NGOs readily equate human rights work with social welfare and social service provision. While this is consistent with a role for human rights NGOs in promoting equality, it fails to fulfil a common concurrent role for human rights NGOs in acting to limit the state's power and hold the state accountable. Australian human rights NGOs are inclined to cooperate with the state in policy facilitation and direct service to address social disadvantage, avoiding

⁸⁴ *ibid.*, at p115 citing G.R Jones *Organisational Theory: Text and Cases* (2nd ed) (Addison-Wesley, Reading (Mass), 1993) p 73.

confrontation over human rights violations. It seems that the NGOs are both influenced by, and chaffing under the control of, Australian government funders.

Indeed, the most likely factor that hinders NGOs' being expansive and flexible in their tactical choices is the need that all NGOs have: to maintain legitimacy.⁸⁵ In the Australian environment, this means that NGOs must maintain their legitimacy in the eyes of government in order to continue to receive government grants. As a result, Australian human rights NGOs, despite an expectation that they would act flexibly with an organic organisational structure, tend to be mechanical in their operation, adopting tactics that are less hostile to government rather than tactics that will directly address current or prospective human right issues.

It seems therefore, that Australian human rights NGOs, as with British NGOs in the Thatcher era,⁸⁶ maintain a consistent and narrow approach to tactics even when to do so may not be the best response to the current human rights environment. The human rights environment in Australia has changed considerably in the last ten years. Were Australian human rights NGOs to adopt what Calnan calls a 'comprehensive tactical stance',⁸⁷ they would be better placed to adjust their tactics and tactical mix as the human rights environment changes, so as to maintain maximum effectiveness. Lobbying and campaign work, for example, are tactics that work best with a cooperative and facilitative government, and not with an oppositional government, as the current federal government has often been.

In some ways, Australian human rights NGOs may be in a worse position tactically than British NGOs in the Thatcher era, as there are no comparable national organisations such as Liberty or JUSTICE in Australia to coordinate their work and offer overall tactical leadership. This highlights the absence in the Australian NGO network of the resources and capabilities to engage flexibly in alternative tactics (see 3.4.1), and the importance of NGOs' views on the need for some form of national human rights capability (see Chapter 5 below).

3.4.3 Funding and resources

The extensive formal accountability mechanisms of contemporary funding for Australian NGOs has created a form of hierarchy, with NGOs at its base and governments at its apex. This dependence on government funding has profound effects on NGOs' structures, organisational cultures and tactical choices, discussed above. This is so much the case that it might be seen as the single most important influence on human rights NGO behaviour in Australia.

Urgent attention needs to be given to reducing this dependence – with its related control – and to finding non-government support (funds and other resources) for Australian human rights NGOs. One possibility is to begin a process of creating charitable foundations for the funding of human rights work in Australia similar to the trust created by Liberty in Britain in the 1960s for that purpose.⁸⁸ Other possibilities, suggested by expert commentators interviewed for the research (Chapter 5 below), include philanthropic funding and membership fees, either individual or organisational. The prospect of government funds for human rights advocacy

85 *ibid*, citing R L Darft *Organization Theory and Design* < South-Western, Cincinnati, OH, 2001 at p 144.

86 *ibid* p70.

87 *ibid*, at p 47.

88 The Cobden Civil Liberties Trust founded by the National Council for Civil Liberties in 1963 – see B. Dyson 'Liberty in Britain 1934-1994: A Diamond Jubilee History of the National Council for Civil Liberties', Civil Liberties Trust London, 1994 p38.

being made available in larger amounts with fewer conditions is remote.

A hypothesis tested by the research was that NGOs might see that their effectiveness would be enhanced by their having better access to news media, government bureaucracy, and parliamentarians. This was not borne out by the responses. Rather, the responses seem to suggest that low level and conditional nature of funding are seen as the most important constraints on NGOs' ability to be effective.

3.4.4 Networking

The research shows that, despite the oppressive effects of conditional funding in a challenging political environment, Australian NGOs try to overcome these problems by sharing resources and information amongst themselves, at least to some extent. Australian human rights NGOs share information about human rights and other resources relatively frequently, working in what Organisation Theory calls a network structure:⁸⁹ a cluster of different organisations, rather than one organisation, whose actions are coordinated by agreements rather than a hierarchy. Such structures usually have a small headquarter organisation that does the coordination, increasingly through use of the internet. Network structures are quite responsive to changes in the operational environment.

But as was discussed above (at 3.4.1) the research shows that despite this tendency to networking, Australian human rights NGOs are fairly mechanical and unresponsive in their behaviour. Networking should lead to more organic organisations, but Australia human rights NGOs tend much more to a mechanical operational mode.

This may be because Australian human rights NGOs tend to be similar in their structure, funding and tactics, displaying 'institutional isomorphism' where institutions in a particular field grow increasingly alike.⁹⁰ It is likely that a combination of mimetic (imitative) and coercive forces have led to the isomorphism among Australian human rights NGOs. Conditions on government funding, for example, may encourage NGOs to operate in certain similar ways, coercively influencing their features. NGOs then work within a very narrow band of managerial certainty, not having knowledge of how to handle new problems in different ways.

Without information about how similar organisations manage in, say, other countries, an NGO's natural tendency is imitative, copying other organisations in Australia, particularly in their networks. This isomorphism reduces the range of NGOs that have diverse tactical capabilities, with consequent adverse impact on the effectiveness of NGOs overall.

Coordination is very important for networks of small human rights NGOs. If, as Calnan suggests, effective human rights advocacy is a function of the design of NGOs and their networks, more than of political or cultural contexts,⁹¹ then enhancing the networks is necessary even in the most hostile of political environments.

Responses to questions regarding possible national models for human rights advocacy in Australia (Chapter 5 below) indicate that human rights NGOs see further movement towards the network structure as a solution to their major resource and strategic problems.

⁸⁹ Calnan at note 45 above at p163, citing Jones.

⁹⁰ *ibid* at p116, citing Daft.

⁹¹ *ibid* p26 citing M.Tushnet *The NAACP's Strategy Against Segregated Education 1925-1950* (University of North Carolina Press, Chapel Hill (NC), 1987) pp xi and xiii.

Chapter 4 Attitudes to human rights and social justice

4.1 Introduction

Before the research was undertaken, experience suggested that ideas of human rights and social justice are closely related in the way human rights NGOs in Australia conceive of and describe their work. The responses reported at 3.3.5 bear this out. Accordingly, the research was designed to explore the phenomenon further.

The respondents were not given any prescribed meaning for either 'social justice' or 'human rights'. Similarly, when asked about terms and language that relate to or represent 'social justice' and 'human rights', respondents were given no guidance. The research tests the perceptions that Australian human rights NGOs have of these concepts.

4.2 Definitions

4.2.1 Overview: NGO definitions of 'human rights' and 'social justice'

Australian human rights NGOs see the concepts of human rights and social justice as similar and interchangeable.

Overall, Australian human rights NGOs understand human rights to be universal rights that guarantee minimum conditions for a dignified life. They see these rights as being those recorded in the international treaties that recognise the existence of and describe human rights: for example, "articulated in the UDHR" and "as specified by UN". The responses suggest that human rights are perceived by Australian human rights NGOs as being concerned with an individual's claim, while social justice addresses systemic issues.

The research shows that to a very high degree the concepts of human rights and social justice are seen as *interdependent*. Representative responses are:

- "complementary – human rights is the global overarching set of principles whilst social justice deals with the local"
- "you cannot have one without the other"
- "one leads to the other – they are complementary".

This perceived interdependency between concepts of human rights and social justice is consistent with the overlapping definitions given in answer to questions 4 and 5 (4.2.2 and 4.2.3 below). Many respondents define human rights as a means of achieving social justice ("by meeting human rights standards we develop social justice"), and many define see social justice as a means of achieving human rights ("social justice is about action taken to attain human rights").

4.2.2 Understanding 'human rights'

Australian human rights NGOs understand human rights to be universal rights that guarantee minimum conditions for a dignified life, though few use traditional human rights language.

We asked respondents (q4) to describe what they understand the term "human rights" to mean. The question was open-ended and the responses were grouped for purposes of reporting.

The most common conception of 'human rights' is the inalienable, inherent, individual rights of a human being (37.5%). Responses to the question include:

- "universal, indivisible and interconnected"
- "common humanity"
- "as a consequence of being human".

Many see human rights as a statement of social standards and conditions (26.8%), for example:

- "the provision of fair and just standards in everyday living"
- "affordable food, shelter, clothing, health care"
- "provision of fair and just standards of entitlements in everyday living".

A similar number identify human rights with the rights set out in international treaties (25%):

- "protection and maintenance of rights established by international conventions"
- "rights established by international conventions"
- "as articulated in the UDHR"

Finally, some equate human rights with ideas of equality and fairness, for example (10.7%):

- "fair and equal treatment without deprivation of liberty"
- "fair and equal treatment"
- "a fair go".

4.2.3 Understanding 'social justice'

A majority of NGOs understand 'social justice' to be concerned with issues of access, equity and fairness in social systems and relations, with a minority linking it more directly with human rights.

We asked respondents (q5) to describe what they understand the term "social justice" to mean. Again, the question was open-ended and the responses were grouped for purposes of reporting.

Most of respondents understand 'social justice' to be concerned with issues of access, equity and fairness in social systems and relations (58.2%), for example:

- "a systematic approach to bringing about fairness in society"
- "citizens' opportunity to participate in benefits and structures of society"

- “the means of achieving equality and access to justice for all”
- “to gain social and economic equality and social and political participation”.

The remainder divided between seeing social justice either as a process of distributive justice (18.2%) (for example, “the equitable distribution of power and resources across class and income division”), or as giving effect to human rights standards (18.2% each) (for example, “action and philosophy aimed at preventing human rights abuses”). A few (5.5%) saw social justice as a guarantee of non-discrimination in access to services (“access . . . irrespective of class, race, gender, culture”).

4.2.4 Perceived relationship between ‘human rights’ and ‘social justice’

An NGO is likely to see the concepts of human rights and social justice as similar or interchangeable, with those organisations specifying human rights but not social justice as a primary objective being more likely to distinguish between the concepts.

We asked respondents (q24) whether they believe that the concepts of “human rights” and “social justice” are similar, interchangeable or different, and to explain their answer.

Most NGOs see the concepts of human rights and social justice as either similar (53.4%) or interchangeable (15.5%). About a third of respondents see the concepts of human rights and social justice as different (31%), saying for example:

- “‘justice’ is an agenda you always have to fight for; ‘rights’ discourse implies a pre-existing category of rights”
- “human rights are fundamental and inalienable; social justice is a social/political objective”
- “human rights has an individual focus; social justice is more encompassing”.

We correlated the responses to q24 with organisations who, in q1, said that human rights, but not social justice, is a primary objective for them. Only half of those organisations see the concepts of human rights and social justice as different (50%). The other half see the concepts as similar (33.2%) or interchangeable (16.7%).

Similarly, we correlated the responses to q24 with organisations who, in q1, said that social justice, but not human rights, is a primary objective for them. Fewer than a quarter of those organisations see the concepts of human rights and social justice as different (22.7%). Most see the concepts as similar (50%) or interchangeable (27.3%).

4.3 Use of language

4.3.1 Overview: NGOs attitudes towards human rights and social justice language

Although similar and at times interchangeable, the terms ‘human rights’ and ‘social justice’ are seen to have different import and to carry a different message, depending on the circumstances.

Australian human rights NGOs appear to see 'legal weight' as the most significant advantage offered by the term 'human rights'. They see 'strategic utility' as the most significant advantage offered by the term 'social justice'. Both terms are seen to carry much the same political weight.

Overall, the language of human rights is clearly preferred for its specificity, legal weight and universality, while the language of social justice is clearly preferred for its effectiveness and accessibility, and for purposes of strategy and funding.

The balance tips to the language of social justice for relevance and to the language of human rights for persuasiveness and political weight.

4.3.2 Choosing to use 'human rights' or 'social justice' language

In general, NGOs choose between using the language of human rights and the language of social justice depending according to the circumstances.

In summary, NGOs prefer social justice language to human rights language because:

- it is readily understood by civil society
- it has greater strategic utility in activities such as lobbying
- it is seen as more effective in getting results, and,
- it is seen as more relevant to their work.

NGOs prefer to use human rights language in circumstances that require:

- specificity
- universality
- persuasiveness
- political weight, and
- legal weight.

We asked respondents (q25 and 26) why they would elect to use the language of either "human rights" or "social justice" in their work, inviting them to select from a range of reasons, and to add any other. In our description of the results we have described this 'election' as a preference.

Many respondents did not have a preference in every instance, and said that at times they would use both human rights language and social justice language for the same reason. For example, for political weight one respondent might prefer the language of human rights, another might prefer the language of social justice, and a third might have no preference and use both for that purpose.

The figure given below for 'interchangeable' reflects the occasions when organisations did not opt for one or the other of 'social justice language' and 'human rights language' in answering questions 25 and 26, but nominated both. This could indicate a respondent's indifference to definitions, or a considered approach that either conflates the two or recognises them as different but equally valid.

NGOs prefer the language of social justice to the language of human rights:

- for its accessibility in NGOs' work (52% of respondents would use social justice language, 32% would use human rights language, and 16% as interchangeable)
- for its strategic utility in NGOs work (50% of respondents would use social justice language, 9.1% would use human rights language, and 40.9% as interchangeable)
- for its effectiveness in NGOs' work (45.5% of respondents would use social justice language, 31.8% would use human rights language, and 22.7% as interchangeable)
- for its relevance to NGOs' work (35.9% of respondents would use social justice language, 23.1% would use human rights language, and 41% as interchangeable).

For a range of other reasons social justice was reported as a more useful term to use: appealing to more stakeholders, carrying "less baggage", being a better description of a service provider role, being more encompassing, and carrying with it a "feel good halo effect".

NGOs prefer the language of human rights to the language of social justice:

- as a more specific term (57.1% of respondents would use human rights language, 14.3% would use social justice language, and 28.6% would use either or both)
- as a more universal term (48.1% of respondents would use human rights language, 22.2% would use social justice language, and 29.6% would use either or both)
- for its persuasiveness in NGOs' work (40% of respondents would use human rights language, 32% would use social justice language, and 28% would use either or both)
- for its political weight in NGOs' work (34.9% of respondents would use human rights language, 30.2% would use social justice language, and 34.9% would use either or both)
- as carrying more legal weight (79.3% of respondents would use human rights language, none would use social justice language, and 20.7% would use either or both).

4.3.3 Choice of language to achieve human rights standards

NGOs that pursue human rights goals have a clear preference for human rights language for some purposes (such as legal weight and universality) but prefer social justice language for other purposes (such as attracting funding) and for some purposes (such as relevance) will use the two interchangeably.

In answer to q1, 36.7% of respondents identified 'achieving human rights standards' as a primary objective; we refer to them here as 'human rights organisations'. We correlated these organisations' responses to questions 25 and 26 to see how useful those organisations find the language of 'human rights' in achieving their human rights aim.

On the general relevance of human rights language to the goal of achieving human rights standards, only 7.1% of human rights organisations prefer the language of social justice. 35.7% prefer the language of human rights while 57.1% see the language as interchangeable for this purpose.

For its general effectiveness in achieving human rights standards, 54.5% of human rights

organisations prefer the language of social justice, or see the language as interchangeable (18.2%). Only 27.3% prefer human rights language for its general effectiveness.

For the purposes of general persuasiveness in achieving human rights standards, there is a clear preference among human rights organisations for the language of human rights (50%), while 30% prefer the language of social justice and 20% see the language as interchangeable.

For purposes of specificity the preference is even more marked: over half (54.5%) the human rights organisations prefer the language of human rights, and although many see the language as interchangeable (45.5%), none prefer the language of social justice for this purpose.

For purposes of legal weight, no human rights organisations prefer the language of social justice. While some (27.3%) human rights organisations see the language as interchangeable for this purpose, a significant majority (72.7%) favour the language of human rights.

For purposes of political weight 53.8% of human rights organisations see the language as interchangeable for this purpose, while 38.5% favour the language of human rights and only 7.7% prefer the language of social justice.

For purposes of accessibility, human rights organisations are evenly divided: 50% prefer the language of social justice and 50% prefer the language of human rights.

For purposes of universality, no human rights organisations prefer the language of social justice: 60% prefer the language of human rights and 40% see the language as interchangeable for this purpose.

For its strategic effect, human rights organisations do not indicate a strong preference: 30% prefer the language of social justice, 20% the language of human rights, and 50% see the language as interchangeable for this purpose.

For attracting funding the preference among human rights organisations is much the same as for other organisations: only 20% prefer to use the language of human rights for this purpose while 40% prefer the language of social justice and 40% see the language as interchangeable.

4.3.4 Choice of language to achieve social justice

NGOs that pursue social justice goals have a clear preference for social justice language for some purposes (such as accessibility and strategic effect) but prefer human rights language for other purposes (such as legal weight and specificity) and for some purposes (such as political weight) will use the two interchangeably.

In answer to q1, 68.3% of respondents identified 'achieving social justice' as a primary objective; we refer to them here as 'social justice organisations'. We correlated these organisations' responses with questions 25 and 26 to see how useful those organisations find the language of 'human rights' in achieving their social justice aim.

For general relevance to the goal of achieving social justice, views were quite evenly spread: 35.7% of social justice organisations prefer the language of social justice, 28.6% prefer the language of human rights and 35.7% see the language as interchangeable for this purpose.

Similarly for general persuasiveness in achieving social justice, 28.6% of social justice organisations prefer the language of social justice, 38.1% prefer the language of human rights

and 33.3% see the language as interchangeable.

On the question of general effectiveness as well, social justice organisations prefer the language of social justice: 40%. About a quarter prefer the language of human rights (26.7%) and 33.3% see the language as interchangeable.

For purposes of specificity, however, most social justice organisations strongly prefer the language of human rights (63.2%); only 15.8% prefer the language of social justice and 21.1% see the language as interchangeable for this purpose.

For purposes of legal weight, most social justice organisations (73.7%) prefer the language of human rights. Some (26.3%) see the language as interchangeable for this purpose, but none favour the language of social justice.

For purposes of political weight, the preference was evenly spread: 31.3% of social justice organisations prefer the language of social justice, and exactly the same proportion prefer the language of human rights; 37.5% see the language as interchangeable for this purpose.

For purposes of accessibility, many social justice organisations prefer the language of social justice (55.6%); only 27.8% prefer the language of human rights and 16.7% see the language as interchangeable for this purpose.

For its universality, social justice organisations prefer the language of human rights (40%), while 25% prefer the language of social justice and 35% see the language as interchangeable for this purpose.

For its strategic effect, the preference runs strongly in favour of the language of social justice: 52.9%. While 41.2% of social justice organisations see the language as interchangeable, only 5.9% prefer to use the language of human rights for this purpose.

For attracting funding the preference shifts even more markedly in favour of the language of social justice: 76.9%; 15.4% of social justice organisations see the language as interchangeable, and only 7.7% prefer to use the language of human rights for this purpose.

4.3.5 Choice of language for change in law and policy reform

NGOs that pursue law reform and policy change have a clear preference for social justice language for some purposes (such as effectiveness and attracting funding) but prefer human rights language for other purposes (such as legal weight and persuasiveness) and for some purposes (such as strategic effect) will use the two interchangeably.

In answer to q1, 53.3% of respondents identified 'bringing about legislative and policy change' as a primary objective; we refer to them here as 'reform organisations'. We correlated these organisations' responses to questions 25 and 26 to see how useful those organisations find the language of 'human rights' in achieving their social justice aim.

On the general relevance of human rights language for achieving legislative and policy change, views were fairly evenly spread: 37.5% of reform organisations prefer the language of social justice, 25% prefer the language of human rights and 37.5% see the language as interchangeable for this purpose.

For general persuasiveness in for achieving legislative and policy change there is an obvious preference among reform organisations for the language of human rights: 50%; 37.5% prefer the language of social justice and 12.5% see the language as interchangeable.

The reverse is true for general effectiveness: there is a strong preference among reform organisations for the language of social justice (69.2%), while 30.8% prefer the language of human rights and none see the language as interchangeable for this purpose.

For purposes of specificity, however, the balance swings back: most reform organisations clearly prefer the language of human rights for pursuing legislative and policy change (57.9%); only 15.8% prefer the language of social justice and 21.1% see the language as interchangeable for this purpose.

For purposes of legal weight, a substantial majority (87.5%) of reform organisations favour the language of human rights; 12.5% see the language as interchangeable for this purpose, while none prefer the language of social justice.

For its political weight in achieving legislative and policy change, the language of human rights is preferred by 45.8% of reform organisations; 20.8% prefer the language of social justice and 33.3% see the language as interchangeable for this purpose.

For purposes of accessibility and universality, reform organisations think similarly to social justice organisations. For accessibility 57.1% prefer the language of social justice, 35.7% the language of human rights and 7.1% see the language as interchangeable. For universality the trend reverses: only 18.8% prefer the language of social justice while 56.3% prefer the language of human rights and 25% see the language as interchangeable.

For its strategic effect, 36.4% of reform organisations tend to prefer the language of social justice for achieving their objective of legislative and policy change, against 18.2% for the language of human rights while 45.5% see the language as interchangeable.

As with social justice organisations, for attracting funding reform organisations have a strong preference for the language of social justice: 66.7%; 22.2% see the language as interchangeable, and only 11.1% prefer to use the language of human rights for this purpose.

4.3.6 Choice of language for making policy submissions

NGOs that pursue policy submissions and representations have a clear preference for social justice language for some purposes (such as accessibility and attracting funding) but prefer human rights language for other purposes (such as legal weight and specificity) and for some purposes (such as relevance) will use the two interchangeably.

In answer to q3, 93.3% of respondents said they make policy submissions and representations. We correlated these organisations' responses to questions 25 and 26 to see how useful they find the language of 'human rights' in making their make policy submissions and representations.

35.1% of organisations that make policy submissions and representations see the language of social justice as relevant to their work; 21.6% see the language of human rights as relevant and 43.2% see the language as interchangeable for this purpose.

47.6% of organisations that make policy submissions and representations see the language of

social justice as effective in their work; 23.8% see the language of human rights as effective and 28.6% see the language as interchangeable for this purpose.

14.8% of organisations that make policy submissions and representations see the language of social justice as providing specificity in their work; 55.6% see the language of human rights as doing so, and 29.6% see the language as interchangeable for this purpose.

No organisations that make policy submissions and representations see the language of social justice as having legal weight in their work; 77.8% see the language of human rights as having legal weight and 22.2% see the language as interchangeable for this purpose.

30% of organisations that make policy submissions and representations see the language of social justice as carrying political weight their work; 32.5% see the language of human rights carrying political weight and 37.5% see the language as interchangeable for this purpose.

52.4% of organisations that make policy submissions and representations see the language of social justice as more accessible in their work; 33.3% see the language of human rights as more accessible and 14.3% see the language as interchangeable for this purpose.

23.1% of organisations that make policy submissions and representations see the language of social justice as appealing to universality in their work; 46.2% see the language of human rights as appealing to universality and 30.8% see the language as interchangeable for this purpose.

47.6% of organisations that make policy submissions and representations see the language of social justice as strategic in their work; only 9.5% see the language of human rights as strategic and 42.9% see the language as interchangeable for this purpose.

73.3% of organisations that make policy submissions and representations see the language of social justice as useful for attracting funding; only 6.7% see the language of human rights as strategic and 20% see the language as interchangeable for this purpose.

4.4 Analysis

4.4.1 Meaning given to the term 'social justice'

The research indicates that when NGOs say they seek 'social justice', they seek action by government that will pursue and promote equality, principally in access to public services. Remembering that respondents were not given any prescribed meaning for the term 'social justice', NGOs seem to understand it in a Rawlsian sense, referring to a system of rules resulting in equality of opportunity among different people, groups or classes of society.

For John Rawls, social justice is "about finding institutional arrangements . . . a system of rules that would result in fair equality of opportunity and would be to the advantage of the least well off".⁹² NGOs' social justice advocacy need not be as emphatic a position as support for a socialist state, but it does carry with it a belief that democratic intervention can achieve at least equal access to basic benefits.⁹³

But this idea of social justice is highly contested. For Friedrich Hayek, the idea of social

⁹² Don Arthur 'Hayek and Rawls: An Unlikely Fusion' Evatt Foundation Paper 191 (2007) at <<http://evatt.org.au/publications/papers/191.html>>.

⁹³ Stephen Macedo, 'Hayek's Liberal Legacy', (1999) 19 *Cato Journal* 289 at 294.

justice is nonsense. Hayek sees attempts to achieve social justice as a futile effort to control and manage the complex and arbitrary nature of the market, and the market as necessarily capricious, favouring some and being cruel to others, without necessary regard to effort or desert or entitlement or rights.

For Hayek this capriciousness ('spontaneous order') is unavoidable, if unfortunate, while for NGOs it is the very phenomenon that must be ameliorated and remedied by state action. It may be that there can be some theoretical reconciliation between the Rawls and Hayek,⁹⁴ but, as a practical matter, the opposed positions they represent are clearly delineated in public policy.

The research does not indicate whether, in so strongly identifying as social justice oriented organisations (see 3.3.2 and 3.3.5) human rights NGOs in Australia are consciously taking a politico-philosophical position. In describing their understanding of social justice, few respondents expressed themselves in terms of the market, power and politics (4.2.3).

But the readiness with which human rights NGOs describe themselves in social justice terms could have important implications for the way they are positioned in public policy debates. Robert Manne has said that "[l]ike Hayek, John Howard regards the idea of social justice as incoherent."⁹⁵ If true, this goes some way towards explaining the consistent and critical scrutiny of NGOs described in Chapter 1.

4.4.2 Meaning given to the term 'human rights'

The survey did not offer a prescribed meaning for the term 'human rights', and the responses showed that NGOs do not have a consistent idea of its meaning.

The conventional point of reference for contemporary human rights is the collection of international instruments known as the international Bill of Rights: the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic Social and Cultural Rights. The rights set out there are said, in the Universal Declaration, to derive from the inherent dignity and equal and inalienable rights of all people.

A little over half the respondents did equate human rights with either its philosophical claims to universality and inalienability, or its practical explication in the international treaties. But over a third described human rights in terms that invoke 'the idea of social justice, describing them in terms such as "fair", "equal", and a fair share of social services (see 4.2.2).

This lack of clarity is consistent with the low level of detailed knowledge about human rights among the respondent organisations (see 3.3.8), and suggests a weak human rights culture among the very organisations that promote human rights in Australia. The research suggests that there is a connection between the extent to which organisations identify as either human rights or social justice organisations, and their knowledge of human rights and its language.

94 *ibid.*

95 Robert Manne, 'Warrior for the Future' *The Age*, 12 December 2006.

4.4.3 Use of 'human rights' and 'social justice' language

Respondents that listed their organisational objectives as any of 'social justice', 'law reform' and 'human rights' all agreed that the term 'social justice' is superior for its effectiveness and accessibility. All organisations *except* those with human rights organisational objectives consider the term 'social justice' to be superior as well for its strategic effectiveness and ability to attract funding.

Human rights language is seen by all the respondents as more persuasive, more specific and more universal. For political weight most organisations see the terms as equally effective, except for law reform organisations, which favour using human rights language. On the question of relevance the organisations are predictably divided: those with human rights objectives see human rights language as more relevant, whereas those with social justice and law reform objectives see social justice language as more relevant. Organisations doing policy submissions see the concepts as equally relevant to their work. Most striking was that no organisation sees social justice language as carrying legal weight.

Illustrating perhaps a degree of indifference to any distinction between the language of human rights and social justice, or a degree of tactical choice, Teresa Ellis, a community legal centre worker, has written⁹⁶ that:

[t]here is very little to separate human rights and social justice, indeed the line between these two is very blurred. The distinction between them is no doubt the product of a range of factors, including the absence of constitutional guarantees of rights in Australia and more generally the Australian reluctance to analyse issues in terms of rights. To most CLCs [community legal centres] there is no line between them whatsoever.

When we talk of human rights something strange occurs in governments. It is a term that seems to cross over both sides of politics, in some ways human rights seem an 'apolitical' (perhaps non-threatening) issue. Human rights are things that men in suits confer and discuss. Money quickly appears for extensive reports and other initiatives. Human rights conjure up exotic locations and issues and idealistic abstract standards.

On the other hand the term "social justice" entails something completely different. Social justice conjures up visions of riots, marches, hunger strikes, tougher local issues. Social justice threatens the status quo. It takes a government of true will and belief to pursue goals that are structured around the idea of "social justice".

To the extent that the ideas of social justice and human rights are seen as interdependent, rather than interchangeable, the relationship between the two is consistently described as one where human rights are a step towards, or a way of, achieving social justice. That is, social justice is the larger goal, and human rights standards are a statement of a part – perhaps a large part – of what constitutes social justice.

It is said, for example, that "the language of rights has been adopted and used by citizens throughout the world *as a means of claiming social justice*", and that "[t]he objective of the human rights framework . . . is *concerned with particular outcomes* . . . [which] include the achievement of equality and social justice – the fair distribution of social and economic

⁹⁶ Teresa Ellis, 'Human Rights and Social Justice: A frontline perspective from a Community Legal Centre' [1996] *MurUEJL* 34 at [17]–[18].

opportunities and resources”⁹⁷ (emphasis added). Similarly, Tom Campbell argues against a “bill of rights . . . to achieve social justice”, and refers to “that part of social justice involved in human rights” (emphasis added).⁹⁸ Perhaps explaining a preference for, and prevalence of, social justice language, it has been suggested that “certain social justice issues . . . may be difficult to articulate within human rights discourse”.⁹⁹

The fact that Australian human rights NGOs tend to use the terms ‘social justice’ and ‘human rights’ interchangeably suggests that they are as focused on economic and social outcomes as they are on the defence of human rights. As is discussed further below, the fact that human rights are equated with the egalitarian aims of social justice, and not the state-limiting aims of civil and political rights, suggests that Australian human rights NGOs may engage in their advocacy in support of government’s delivery of funded welfare services at the expense of acting to protect human rights by limiting state conduct. This is reflected in the language they use.

To the extent that using social justice or human rights language is not a tactical choice, Australian human rights NGOs’ readiness to use the language interchangeably is consistent with a weak culture of human rights, not only within Australian civil society and political culture, but also within the human rights NGOs themselves. A possible response to this is to strengthen human rights culture, and share knowledge of human rights standards and processes, possibly by promoting stronger links between the staff of Australian human rights NGOs and, say, human rights academics in Australian universities and human rights practitioners from overseas.

If, however, the use of social justice and human rights language by Australian human rights NGOs is tactical, using social justice language could work as camouflage when dealing with a society that does not understand or have a favourable attitude to human rights, and with a political culture that can be openly hostile to NGOs’ human rights advocacy. But a consequence of this approach is to limit both the spread of human rights culture in Australian society, and to constrain the extent to which NGOs think and act in terms of human rights.

Australian NGOs could be encouraged to more clearly use and assert human rights language and frameworks in their work, at the constant risk, however, of alienating their government funding for as long as they remain principally dependent on it. A way to manage this risk may be to adopt imaginative solutions to alternative funding sources (see 3.4.3).

4.4.4 Other research

The results of this research on Australian human rights NGOs’ use of human rights language is consistent with similar research undertaken by Roger Dunstan.¹⁰⁰ Dunstan interviewed “key participants” in the development of ‘Working Nation’, the principle employment policy of the Hawke/Keating Governments in Australia in the 1990s. Dunstan reports that “[n]one of the respondents identified human rights as their primary principled discourse”.¹⁰¹ To a degree

97 Clare Ferguson (1999) *Global Social Policy Principles: Human Rights and Social Justice* Department for International Development UK at 9, available at <<http://www.dfid.gov.uk/pubs/files/sdd-gsp.pdf>>.

98 Tom Campbell ‘Can the Law Deliver Social Justice’ (2001) 5 *University of Western Sydney Law Review* 43 at 52.

99 Daniel Sharp, ‘Prosecutions, Development, and Justice: The Trial of Hissein Habré’ (2003) 16 *Harvard Human Rights Journal* 147 at 162.

100 Roger Dunstan *An expansive human rights approach to employment policy: a preferred alternative to neo-liberalism?* Unpublished PhD thesis, Department of Social Work, Social Policy and Sociology, University of Sydney, July 2002.

101 *ibid* at 266.

this was a conscious choice, as formal rights language was perceived as “constraining to governments [whether] engaged in reform [or] . . . in rights eroding behaviour”.¹⁰² Further, rights language was not used because “a well-developed rights discourse was not the discourse tradition through which issues of social citizenship, social protection and welfare entitlements were generally identified or argued within the Australian context”.¹⁰³ Dunstan’s research showed that “where rights discourse had been adopted into mainstream political discourse this had tended to occur in very particular way and usually with a focus on discrimination issues framed within a civil and political rights context.”¹⁰⁴

Similarly to the research for this report, Dunstan found that, although his respondents preferred the language of “social justice, equity or inclusion”, they saw an overlap between that language and ‘human rights’, and that some of them viewed rights as implicit in or underpinning their policy advocacy.¹⁰⁵ As Dunstan points out, what this avoids is the mandatory nature of rights language – unsurprising when the exercise is one of securing trade-offs in a debate on government policy.¹⁰⁶ A consequence is that it is a sufficient measure of the validity of policy – even when it is ‘rights-congruent’ policy – to refer to the dominant criteria of “efficiency, productivity, economic growth and improved economic performance . . . [E]quity priorities alone [are] deemed to be insufficient policy justification”.¹⁰⁷

Dunstan summarises Brian Howe’s account of the development of Australia social policy in the last quarter of the 20th century. It is a revealing account of the place of human rights language in Australian politics, and suggests an explanation for the ambivalent approach that this research shows Australian NGOs take to human rights language:

. . . a formal rights discourse had not developed within the Australian political culture, although in many cases the goals of social justice and equity discourses were rights-congruent; the focus of Australian policy development had tended to be orientated towards domestic issues rather than referenced towards international rights ‘Covenants’, which were perceived as external. Rights, where they had been identified and incorporated into mainstream political discourse and institutional forms, had tended to focus on civil and political rights, with discrimination as the focus. Employment had during the Fraser, Hawke and Keating years, tended to be seen as a matter of economic management rather than as a matter of human rights and, not surprisingly, political awareness as to rights issues had developed in relation to those rights that had been incorporated into mainstream political culture, that is, rights addressing issues of discrimination.¹⁰⁸

Dunstan observes on “[t]he lack of rights discourse or even of rights ideas existing as part of mainstream Labor discourse and policy development” during the Hawke/Keating years of Australian government.¹⁰⁹ On the other hand, in being interviewed for this report, Paul Keating claimed that in Australian policy development human rights are in fact represented by Labor

102 *ibid* at 267.

103 *ibid*.

104 *ibid* at 266-267.

105 *ibid* at 268-269; 284.

106 *ibid* at 268.

107 *ibid* at 418, quoting Meredith Edwards.

108 *ibid* at 286.

109 *ibid* at 287.

and the ACTU, speaking in a way that is consistent with Dunstan's description of human rights as implicit in or underpinning policy. Keating has, however, written that using human rights language in foreign policy discussions can be "counterproductive to the [desired] outcomes".¹¹⁰

In 2003 the 'Fair Australia' campaign of the Australian Council of Trade Unions was a coalition of union, community and religious organisations that promoted a discussion about values on issues such as healthcare, education, affordable housing, employment, living standards, cultural diversity. As trade unionist Leigh Hubbard said in an interview for this research,¹¹¹ the campaign did address human rights – for example, the right to be employed – but as part of the concept of fairness.

In being interviewed for this report,¹¹² human rights lawyer Chris Sidoti said he sees the language of social justice and human rights as being largely a function of the discipline that is speaking: social justice issues will be pursued by economists, political scientists and so on, while human rights issues tend to be pursued by lawyers. Sidoti sees it as simply a different language from different disciplines on the same issue.

Similarly, in Dunstan's research a senior policy adviser in the European Union "expressed an unfamiliarity with the application of rights concepts to economic and social policy" and suggested that rights-based questions "would be best addressed with lawyers within the organisation".¹¹³ Australia human rights lawyer Graeme Innes distinguished between a point being 'socially just' or 'fair', and something that is required by human rights. He would use social justice language where the application of human rights language is not so clear.¹¹⁴

Dunstan suggests that the language of rights in Australia has "tended to be used as a discourse of critique, existing on the margin of mainstream political life rather than at its centre".¹¹⁵ One of his interviewees, economist and academic Meredith Edwards, saw the choice to use rights language as political – it is used more when arguing against policies that erode rights such as, she said, those of the Howard Coalition Government, and less so when a government's policies are perceived to be responsive to rights.¹¹⁶ Edwards' view was that the human rights dimensions of policy and politics in Australia will be accidental or an afterthought, until and unless there is an explicit statement of human rights that formalises a framework for policy development.¹¹⁷

As was noted above, it may be that Australian NGOs' use of rights-based language in their advocacy has been constrained by deference to the financial cost associated with recognition of rights, particularly economic, social and cultural rights, and, more recently, the security risks that arise with protection of some civil and political rights. Dunstan's research – on the arguments and language around Australian labour reforms in the 1990s – lends some credence to this; he reports senior bureaucrat Derek Volker's apprehension that "if you have a right then whoever is responsible for safeguarding the right or putting the right into effect really has to provide the

110 Paul Keating, *Engagement: Australia Faces the Asia-Pacific* Pan Macmillan, Sydney, 2000 at 52.

111 interview 14 August 2003.

112 interview August 2003.

113 at note 100 above, at 357.

114 interview 21 July 2003.

115 at note 100 above, at 292.

116 *ibid.*

117 *ibid* at 294.

resources to do whatever is necessary to safeguard the right”.¹¹⁸

Quite simply, as Dunstan points out, human rights language “has tended . . . to be located on the margins of nation-state policy development, partially embraced in relation to civil and political rights and frequently resisted in relation to social, economic, development, environmental rights and rights of indigenous peoples”. Many countries, including Australia, “address social justice, equity and social protection issues outside a formal human rights framework”.¹¹⁹ The resulting policies are “strongly *in accord with* the value base of an expansive human rights approach . . . they are rights responsive and *congruent*, although not expressed in rights language.”¹²⁰ (emphasis added.)

118 *ibid* at 295.

119 *ibid* at 18.

120 *ibid* at 18-19.

Chapter 5 Attitudes to national human rights advocacy

5.1 Introduction

The fact that Australia, atypically for a Western democracy, does not possess a national human rights NGO, suggests that one strategy for supporting Australian human rights NGOs might be the establishment of a single national presence for human rights advocacy in Australia. Accordingly, the opportunity was taken, when surveying NGOs, to test the acceptability to them of some form of national human rights capacity. Their views are presented in Sections 5.2 – 5.4 below, and analysed in Section 5.5.

In addition to surveying the NGOs, the project team interviewed a wide range of individuals who are expert in human rights NGOs, or have publicly expressed views on human right advocacy. They were interviewed individually, and their responses to a set of common questions were recorded. Their views are presented in Section 5.5.3 and assist with the analysis of the views of the NGOs.

5.2 Overview: A national approach to human rights

The research indicates that Australian human rights NGOs:

- agree that a more targeted approach to national human rights advocacy is needed
- prefer, as a response to this need, an NGO coalition, or perhaps a new peak body, rather than a coordinating secretariat or national human rights NGO
- prefer an NGO coalition or new peak body on the basis of what they perceive as a need for better collaboration and advocacy among Australian NGOs
- see funding, and access to the media, bureaucracy and politicians as the main ways in which a national model would assist them in their human rights work
- see knowledge about human rights standards, lobbying and law reform as the main areas of expertise in which a national model would assist them in their human rights work
- agree that a national approach would add value to their own work.

5.3 What shape could it take?

5.3.1 The need for something different

NGOs agree that a more targeted national approach to human rights advocacy is needed.

We asked respondents (q27) whether they think there is a need for a more targeted national approach to human rights advocacy. A substantial majority (92.7%) said 'yes'.

Of the organisations that said 'no', none answered the follow up question (q28): 'is there an organisation currently providing a targeted national approach to human rights advocacy?'.

Only one of the organisations that said 'no', answered the follow up question (q29) 'is there an existing organisation with the capacity to provide a targeted national approach to human rights advocacy?', and it identified the Human Rights and Equal Opportunity Commission (HREOC) as that organisation.

5.3.2 Possible models

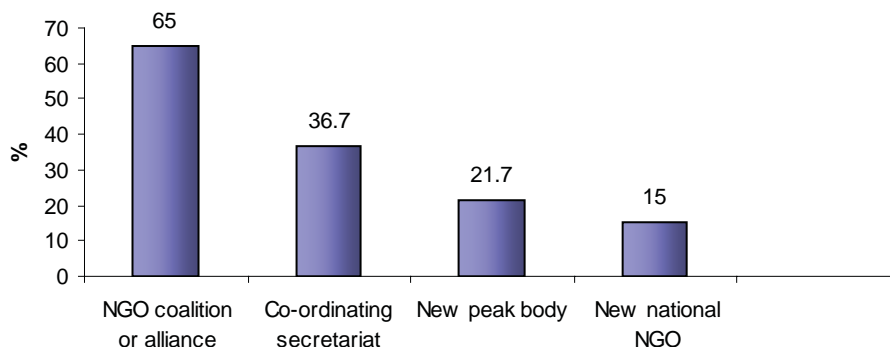
Most NGOs prefer an NGO coalition or alliance, or perhaps a coordinating secretariat or national peak body, rather than a national human rights NGO as a means of providing a more targeted national approach to human rights advocacy.

We asked respondents (q30) which of a number of models or approaches they think would provide a more targeted national approach to human rights advocacy. The options given, from which respondents could choose more than one, were:

- a new peak body
- an NGO coalition or alliance
- a new national NGO
- a co-ordinating secretariat
- adaptation of an existing NGO.

Choosing from the proposed models, most (65%) identified an NGO coalition or alliance as providing a more targeted approach to human rights advocacy in Australia than now exists. Many respondents (36.7%) identified a co-ordinating secretariat. Some (21.7%) identified a new peak body, and only a few saw a new national NGO (15%) or adaptation of an existing NGO (10%) as appropriate to the task. One response suggested that the Public Interest Advocacy Centre (PIAC) could operate nationally and take on this role.

Possible models



In addition to the proposed models, respondents were invited to describe another model. One

suggested “a university” and another a “human rights network”. One declined to select a model, saying “not sure but certainly something that is more independent of government”.

We asked respondents (q31) to rank the same models in order of preference, from 1 (most favoured) to 5 (least favoured). Two respondents declined to rank them, saying that the preferable model would depend on issues of funding and membership.

The rankings, which are statistically significant,¹²¹ show a slight preference for a new peak body ahead of a co-ordinating secretariat and an NGO coalition or alliance. These three options were clearly preferred ahead of a new national NGO and adaptation of an existing NGO:

- new peak body (average ranking 2.52)
- co-ordinating secretariat (2.72)
- NGO coalition or alliance (2.79)
- new national NGO (3.24)
- adaptation of an existing NGO (3.72).

5.4 What value could it bring?

5.4.1 Features of a national approach

NGOs’ principal considerations, when deciding the best means of providing a more targeted national approach to human rights advocacy, are effectiveness in collaboration, coordination and advocacy.

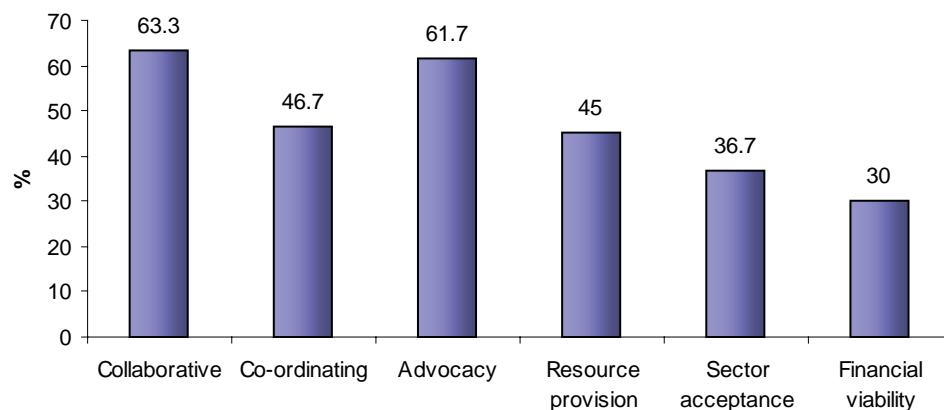
To better understand the preferences for models expressed in q31, we asked respondents (q32) to identify the considerations they regard as important in deciding what will best deliver a national approach to human rights advocacy.

Many identified effectiveness as a *collaborative* body (63.3%), and as a *co-ordinating* body (46.7%), as important considerations in any national approach to human rights activity in Australia. As well, many identified effectiveness as an *advocate* (61.7%), and the capacity to provide *resources and expertise* that are not currently provided (45%).

Less important, but not insignificant, was acceptability within the sector (36.7%), and prospective financial viability (30%). Other factors volunteered by respondents as important were the capacity to engage broad community and grass roots support, accessibility, and the ability to function as a knowledge exchange.

¹²¹ Friedman test, chi-squared 10.84, degrees of freedom 4, p-value 0.028.

Considerations in supporting a national human rights capability



5.4.2 How could a national approach help NGOs?

NGOs see a targeted national approach to human rights advocacy as assisting them financially, and assisting them obtain better access to media, government bureaucracy, and parliamentarians.

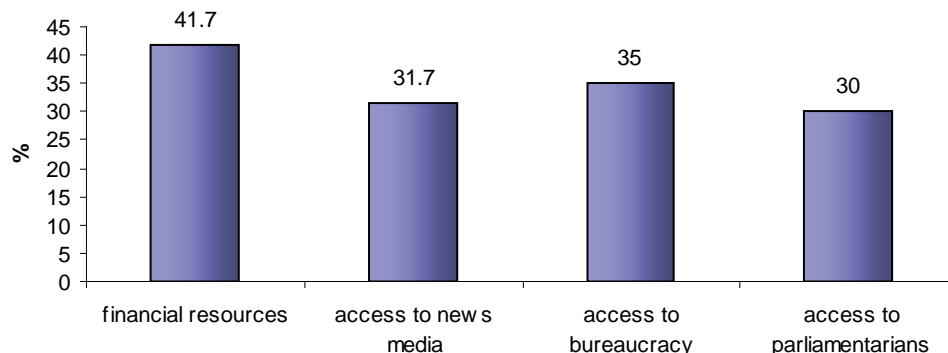
We asked respondents (q33) whether their preferred model would assist them in their current work relating to human rights/social justice, in the following areas:

- financial resources
- equipment
- access to media
- access to government bureaucracy
- access to parliamentarians
- other
- not at all.

Many respondents sought additional financial resources (41.7%), rather than equipment (3.3%). There was fairly even support for better access to the media (31.7%), to the bureaucracy (35%) and to parliamentarians (30%). Other anticipated advantages included enhanced access to information, knowledge and expertise, education and training, and co-ordinated projects and campaigns.

A few respondents (6.6%) could not anticipate receiving any assistance from any model for a national approach.

Support NGOs would hope for from a national approach

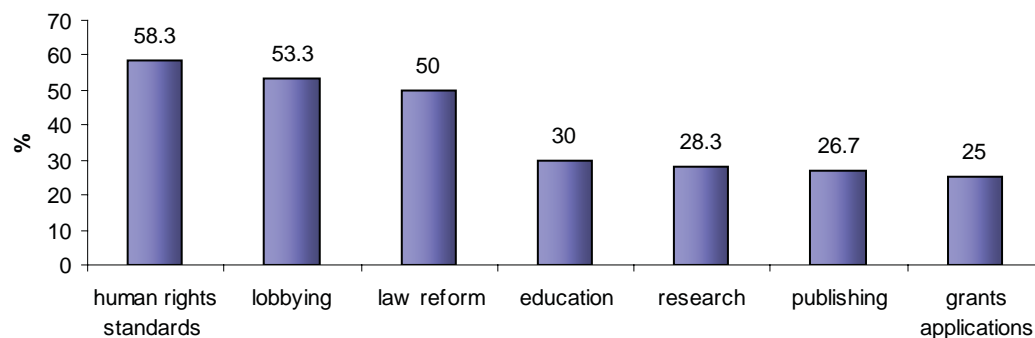


5.4.3 What expertise could a national approach provide?

NGOs see a targeted national approach to human rights advocacy as assisting them with a wide range of staff expertise, including expertise in human rights standards, political lobbying and the process of law reform.

In the same question (q33) we asked respondents how their preferred model could assist them by providing staff expertise in a range of areas. The areas of staff expertise most sought after were human rights standards (58.3%), political lobbying (53.3%), and the process of law reform (50%). Other staff expertise identified at significant levels were education (30%), research and writing (28.3%), publishing in print and online (26.7%), making grant applications (25%), organisational management, planning and governance (23.4%) using the news media (21.7%), and fundraising (21.7%).

Staff expertise NGOs would hope for from a national approach



There was as well some interest in obtaining expertise in human resources (15%), project management (15%), administration and financial management (13.4%), and program evaluation (11.7%). A few respondents (2.2%) could not anticipate receiving any assistance in staff expertise.

5.4.4 Would a national approach provide value to NGOs' own work?

NGOs see a targeted national approach to human rights advocacy as adding value to their work.

We asked respondents (q34) whether an initiative aimed at promoting a national approach for human rights advocacy and education would add value to work they are already doing. Most (91.2%) agreed it would and none said it would not. The remaining 8.8% expressed no view.

Most respondents who saw it would add value to their work said it would be *very* valuable (60%), and the balance said it would be *fairly* valuable.

5.5 Analysis

5.5.1 NGOs' preferred models

Australian human rights NGOs agree that some form of national capability may make a difference to human rights advocacy in Australia. Their preferred model is a coalition/alliance of human rights NGOs or a coordinating secretariat, rather than a peak body or a new national human rights NGO. As one respondent noted, a coordinating secretariat is a model that is "linked" to the idea of the coalition/alliance.

NGOs see a coalition as more likely to improve collaboration, and to increase the overall effectiveness of national human rights advocacy. NGOs have a clear preference for what can generally be described as 'network structures'; one respondent was explicit in saying that their preferred model is a "network".

In offering the option of "NGO coalition/alliance", the questionnaire may have implied that no new body or organisation would result. That was certainly the view of one respondent, who preferred that model and said as well "do not need new body". The research suggests therefore that the significant preference for a coalition or alliance may be, as well, a preference for there not to be a new body whose identity is separate from that of the allied NGOs.

Whatever their preferred model, human rights NGOs see a national capability as assisting them in obtaining funding, securing access to the media, bureaucracy and politicians, enhancing knowledge of human rights standards, and improving skills in lobbying and law reform.

Overall, it appears that Australian human rights NGOs prefer a 'least change' model for national human rights advocacy, preserving the existing landscape and relationships, and resisting the creation of a new and independent body. Further research would be necessary to establish whether this is a considered and knowledgeable position, or one held because of any or all of an organisational culture that is resistant to change, a lack of morale in the face of a threatening environment, or individual NGOs' concern about loss of established power and influence in the

human rights community.

5.5.2 Factors affecting the data

While NGOs acknowledge that their work needs better coordination and greater focus on national advocacy for human rights, they are not as confident that initiatives that address these needs would, at the same time, help them individually. While 91.2% of respondents felt that a more targeted national approach to human rights advocacy would add value to their own work, 40% of these said they would see a national approach as only “fairly valuable” rather than “very valuable”, suggesting some reservations about the real worth of a national approach. So to what extent is the current research reliably indicative of the attitude that Australian NGOs take to the prospect of a national capability of some sort?

Differently from reporting quantifiable data, it is always a risk that evaluative responses do not represent the views actually held by respondents.¹²² In addition to the partial perspective inevitably given by a single respondent or group of respondents, underlying factors can further distort the answers given to survey questions.

One such factor is ‘social desirability bias’,¹²³ where respondents answer questions on the basis of what they think would be considered desirable by the readers of the survey, rather than on the basis of what they really think should be the answer to the question. Social desirability bias could have operated in two ways in the circumstances of this research.

It is possible that respondents were positive about a more targeted national approach to human rights advocacy on the basis that this seemed to them to be *socially desirable*, but were less positive about whether such an initiative would enhance *their own work*. Alternatively, it is possible that respondents were more candid in their support for targeted national human rights advocacy but, on the question of whether they thought it would improve their own performance, they gave an equivocal answer that is more acceptable to the culture of Australian human rights NGOs. Either way, a degree of social desirability bias in the answers seems likely.

A further factor that can distort answers is the ‘acquiescence effect’, where respondents agree uncritically with assumptions implicit in a question.¹²⁴ Respondents are asked for information and knowledge that they don’t have and, threatened by the question, they answer in a particular way so as not to appear ignorant.

In this research, the survey questions assumed that respondents had enough knowledge to choose among the options that were proposed. It is unlikely that many respondent NGOs in fact have experience or knowledge of these options; a national human rights NGO, for example, does not exist in Australia and few respondents would have seen one in operation overseas. The acquiescence effect may have resulted in some respondents having answered this question despite not having the requisite knowledge, and in a way that gave preference to what they knew (coalition or secretariat) over an option about which they did not have enough information. Four respondents actually declined to answer for just that reason, two saying “not sure”, one asking “what is the difference [among the options]?” and, most directly, one saying “insufficient

¹²² Hall, note 79 above, at p 115.

¹²³ Neuman, note 80 above, at p 276.

¹²⁴ *ibid.*

knowledge to rank these”.

5.5.3 Commentators' views

The expert commentators – not immune from either social desirability bias or acquiescence effect – agree with NGOs on the need for national action, but are divided on the form that should take.

Commentators suggested that a common perception is that we are in a ‘post-rights’ era, where rights are established and protected by government, and the focus is now on the global economy. While recent developments might extend this view to include a focus on national security, the point being made is that there is a malaise or lack of interest or unwarranted degree of comfort in Australia about the level of rights protection we enjoy. There is therefore a need to respond to this nationally, through a single strong voice on human rights.

In the commentators' view, a national capability would analyse issues, conduct research and provide resources and training in support of the work of Australian human rights NGOs. None saw a national presence as being at the expense of the work done by existing organisations – all saw it as a resource for and an enhancement of that work. Nor did any commentator see an organisation currently filling that role; Amnesty is seen as having a part to play, as are some peak bodies for the NGOs in particular sectors. Most commentators were attracted to the idea of a unified non-governmental human rights capacity of some sort, and differed only on the form it might take.

While some commentators envisage a national capability of some sort, most commonly described as a ‘peak body’, many commentators do not see a new, national human rights NGO as an appropriate response to this need. Principal among the reservations is that there are sufficient human rights NGOs operating in Australia, and their greatest need is to collaborate and to network, to share resources and to coordinate. Secondary reasons are that there are not enough funds available to support a new funding need, and that the existing diversity of human rights organisations would be too difficult to bring together and maintain as a single voice on human rights.

Even those commentators most supportive of a national NGO cautioned of the need to respect and work with those in the front line. Establishing an accepted national voice for human rights in Australia could be a 5–10 year plan, requiring the building of partnerships and both grass roots support and leadership. It was felt that existing sectors will need to be shown, and to see, that human rights add value to their broad social justice advocacy through, say, promoting the utility of human rights structures and organisations, such as the UN complaints mechanisms.

One issue on which commentators agreed was the need for activity that heightens the level of awareness and understanding of human rights in Australia. While some were of the view that this needs to be human rights education at the community level and in school curricula, others focussed on the need for human rights education for parliamentarians and policy makers, to enable them to work within a human rights framework, evoking the research of Dunstan described above. Some put this goal in terms of the desirability for a domestic statement of human rights – effectively a legislative guarantee of rights.

Not surprisingly, none of the commentators had a solution for how to fund any national human rights non-governmental presence. Some shared the reservations relating to conditional

government funding discussed above, and suggested alternatives such as philanthropic funding and membership fees, either individual or organisational. Some, however, were less concerned about receiving government funding, though doubtful that any would be forthcoming. They considered that, in a mature democracy, government should support civil society and not privatise it: a view to be weighed against the strong move in Australia to marginalise the place of NGOs in policy formulation by seeing them “denied government (public) support by way of financial and other material resources, such as grants and relief from various taxes, charges and fees”.¹²⁵

5.5.4 The need for further research

Further work on the structure, governance and goals of any proposed national non-governmental human rights capability needs to be done. Concerns that the human rights sector is too diverse to fall in behind a single identity could be resolved by considering analogous structures, such as Australian Council of Social Service (ACOSS) which appears to manage a broadly representative role in the social service sector as a national peak body on a federated membership model.

Research into a national non-governmental human rights capability would have to assess the current and likely future perceptions, and possibly regulation, of NGOs generally, and the prevailing and likely future political attitudes to NGOs. One way of testing the structure and role of a national capability and its relationship with the sector would be to ask in what circumstances, on what issues, and subject to what processes would it take a public position on a human rights issue. If this can be agreed, then the resulting model is likely to be viable.

¹²⁵ Mowbray at note 70 above at 12, and see the discussion in Chapter 1 of this report.

Chapter 6 Conclusions

The following summary of conclusions is drawn from the analysis in each of chapters 3, 4 and 5 above.

6.1 NGOs' capabilities (3.4.1 – 3.4.4)

1. Australian human rights NGOs are usually non-membership organisations, run by their staff and board but with a high level of accountability to government funders. They are relatively small in staff numbers, but large enough to differentiate staff roles. Most have at least some awareness of international human rights standards.
2. Although Australian human rights NGOs tend to show aspects of both organic and mechanical structures, they operate in a more mechanical, and consequently less flexible, way. They tend to be similar in their structure, funding and tactics, displaying 'institutional isomorphism' because of mimetic (imitative) and coercive or normative forces. This isomorphism reduces the range of NGOs that have different tactical capabilities, with consequent adverse impact on the effectiveness of the NGO network overall
3. Australian human rights NGOs are dependent on multiple sources of government funding, and see the amount of, and conditions on, this funding as significant limitations on their ability to reach their human rights goals. The effect of funding conditions is to constrain the operational options of Australian NGOs to such an extent that they largely cancel out the organic and flexible characteristics of the network structure.
4. Australian human rights NGOs usually have three year plans to govern their use and combination of tactics. They adopt a quite narrow range of tactics to pursue their aims, concentrating on lobbying, public campaigns, education and publication, with little emphasis on more confrontational tactics such as strategic litigation, use of international human rights mechanisms, and aggressive use of the news media.
5. Australian human rights NGOs are inclined to cooperate with the state in policy facilitation and direct service to address social disadvantage, avoiding confrontation over human rights violations. They are both influenced by, and chaffing under the control of, Australian government funders.
6. The dependence of Australian human rights NGOs on government funding has profound effects on their structures, organisational cultures and tactical choices, discussed above. Urgent attention therefore needs to be given to finding non-government support (funds and other resources) for Australian human rights NGOs.
7. Australian human rights NGOs see that lack of government funding, and the limits that are put on the funding, are the most important constraints on their ability to be effective.

6.2 NGOs' attitudes to human rights and social justice

(4.4.1 – 4.4.3)

1. Australian human rights NGOs see their pursue of social justice aims as seeking government action that will promote equality, principally in access to public services. There is less lack of clarity in NGOs' understanding of their pursuit of human rights aims. Many NGOs equate human rights either with its philosophical claims to universality and inalienability, or with its practical explication in the international treaties, and some describe human rights in terms that equate with the idea of social justice.
2. The low level of detailed knowledge about human rights within the organisations indicates a weak human rights culture among the very organisations that promote human rights in Australia, and suggests a connection between the extent to which organisations identify as either human rights or social justice organisations, and their knowledge of human rights and its language.
3. Australian human rights NGOs commonly see the concepts of human rights and social justice as either interdependent or interchangeable, suggesting the NGOs are as focused on economic and social outcomes as they are on the defence of human rights.
4. To the extent that the ideas of social justice and human rights are seen as interdependent, the relationship between the two is consistently described as one where human rights are a step towards, or a way of, achieving social justice. That is, social justice is the larger goal, and human rights standards are a statement of a part – perhaps a large part – of what constitutes social justice.
5. When the use of social justice and human rights language by Australian human rights NGOs is tactical, social justice language could work as camouflage when dealing with a society that does not understand or have a favourable attitude to human rights, and with a political culture that can be openly hostile to NGOs' human rights advocacy. A consequence is to limit both the spread of human rights culture in Australian society, and to constrain the extent to which NGOs think and act in terms of human rights.

6.3 NGOs' attitudes to national human rights advocacy

(5.5.1 – 5.5.4)

1. Australian human rights NGOs and human rights experts agree there is a need for a more targeted national approach to human rights advocacy.
2. To achieve this, Australian human rights NGOs prefer a 'least change' model, preserving the existing landscape and relationships and resisting the creation of a new and independent body. Their preferred model is a coalition/alliance of human rights NGOs or a coordinating secretariat, rather than a peak body or a new national human rights NGO. They see a coalition as more likely to improve collaboration among NGOs and to increase the overall effectiveness of national human rights advocacy.
3. A national model for human rights advocacy would analyse issues, conduct research and provide resources and training in support of the work of Australian human rights NGOs,

and heighten and understanding of human rights generally. Australian human rights NGOs see a national model as assisting them in obtaining funding, securing access to the media, bureaucracy and politicians, enhancing knowledge of human rights standards, and improving skills in lobbying and law reform.

4. Establishing a national model could be a 5–10 year plan, requiring the building of partnerships and both grass roots support and leadership.
5. Further work on the structure, governance and goals of a national non-governmental human rights capability would assess the current, and likely future, perceptions and regulation of NGOs generally, and the prevailing and likely future political attitudes to NGOs.

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Appendix 1 - The survey instrument

HUMAN RIGHTS PROJECT QUESTIONNAIRE

PART A: THE WORK OF YOUR ORGANISATION

1. Which of the following describes your organisation's primary objectives (you may check more than one, but remember we are asking about primary objectives):

- alleviating poverty
- achieving social justice
- bringing about legislative and policy change
- achieving human rights standards
- increasing knowledge and understanding
- other: _____

2. Who are your clients? (you may check more than one)

- the general community
- young people
- the aged
- people with disabilities
- indigenous peoples
- regional rural and remote communities
- women
- children
- people with language other than English
- a specific ethnic community: _____
- other: _____

3. What activities do you undertake (you may check more than one)

- Provision of services such as accommodation, food, counselling.

- representation of/advocacy for individual clients
- policy submissions and representations
- publications
- political lobbying
- courses and seminars
- campaigns
- other: _____

4. Please complete the following:

- I understand the term “human rights” to mean: _____

5. Please complete the following:

- I understand the term “social justice” to mean: _____

6. Is the work of your organisation explicitly directed to addressing issues of social justice?

- No
- Yes. If yes, what proportion of the work of your organisation is directed to addressing issues which are explicitly described as human rights issues?
 - <10%
 - 10-25%
 - 25-50%
 - >50%

7. Is the work of your organisation explicitly directed to addressing issues of human rights?

- Yes (continue at question 9)
- No (continue at question 8)

8. Is the work of your organisation related in some way to addressing issues of human rights?

Yes Please describe the way in which your organisation's work is related in some way to addressing issues of human rights:

No (now go to Part B)

9. In its human rights work does your organisation rely on relevant international instruments (e.g. treaties) or law?

Yes. If yes, how does your organisation use international instruments or law in its human rights work (you may check more than one)

as standards to be attained

as tools for lobbying

as guides to formulating policies and practices

other: _____

No. If no, why does your organisation not rely on relevant international instruments or law in its human rights work (you may check more than one)

not relevant

lack of knowledge

too complex

too inaccessible

insufficient time or resources to locate relevant law or sources

other: _____

10. Can you identify the international human rights standards addressed by your organisation?

The right to: _____

The right to: _____

The right to: _____

The right to: _____

Others: _____

11. Is there one or more persons in your organisation whose job it is to be knowledgeable about the application of human rights standards to your organisations activities?

Yes

No

12. How would you describe your knowledge of the human rights standards found in international treaties and conventions?

non-existent

some awareness

some general understanding

some detail

detailed

unimportant because necessary information is sourced outside the organisation
(Please detail where from?)

13. How would you rate the knowledge of other members of your organisation of the human rights standards found in international treaties and conventions?

non-existent

some awareness

some general understanding

some detail

detailed

unimportant because necessary information is sourced outside the organisation-
(Please detail where from?)

14. Does your organisation use human rights information gained externally?

Yes (please describe sources and nature of information in general terms)

No If your organisation needed to access such information on human rights where would you get it from?

15 Does your organisation share any human rights resources (e.g. library, training etc.) with any other organisation to perform the work of your organisation?

Yes. Specify the nature of the resources

No. Why not?

Non available

Not aware of any resources

Not aware of other organisation with whom to share resources

Not needed

Other: _____

16. Would your organisation find it helpful to share such resources with other organisations which relate to access to relevant international instruments or human rights law regarding the work of your organisation?

Yes. What resource sharing would assist your organisation?

No

Please go to Part B

PART B: STRUCTURE AND FUNDING OF YOUR ORGANISATION

17. How many paid staff members in your organisation are formally responsible – eg in their job description, duty statement, periodic work plan etc – for addressing issues of human rights?

- None
- One
- Two
- Three
- Four
- More than four

18. How is the organisation funded? (you may check more than one)

- State/Territory Government program grant
- Federal Government project grant
- for-profit activity
- private grant
- membership fees
- fund raising
- donations
- other: _____

19. Please tell us if your organisation has any of the following, and if so, what it is:

- Vision statement: _____
- Mission statement: _____
- Values statement: _____
- Organisational aim: _____
- Organisational goals: _____
- Strategic Plan: _____
- Current strategies: _____

20. What period does the Strategic Plan cover:

- not applicable
- 1 year
- 3 years
- 5 years

21. Who is involved in developing the Strategic Plan (you may check more than one):

- not applicable
- the Board / Management Committee
- the staff
- clients / consumers
- the community
- stakeholders
- funders
- other: _____

22. Is there anything in the documents referred to in question 19 that relates to human rights?

- No.
- Yes. Are there any constraints that you operate under that makes achieving your objectives regarding human rights difficult? (Please tick as many of the boxes below as are relevant.)
- None
- Insufficient funds
- Insufficient equipment
- Constraints imposed by funders
- Shortage of staff time
- Staff turnover
- Change in direction from Board/ Management Committee
- Competing service demands

- Insufficient access to media
- Insufficient access to government bureaucracy
- Insufficient access to parliamentarians
- Insufficient staff expertise in:
 - administration
 - human resources
 - information technologies
 - print publishing
 - online publishing
 - financial management
 - fund raising
 - service provision
 - online publishing
 - online publishing
 - law reform processes
 - using the media
 - project management
 - program evaluation
 - organisational management
 - Financial management
 - organisational planning
 - governance
 - grant application
 - specialty area of service
 - human rights standard
 - research and writing
 - lobbying
- Other: _____

23. Please rank in priority (1 = most important) any of the following which would help you better achieve your objectives regarding human rights (you may check more than one):

- not applicable
- manageable service demands
- more equipment
- less staff turnover
- increased staff expertise
- fewer imposed constraints on use of funds
- better access to parliamentarians
- better access to government beaurocracy
- organisational planning
- better access to media
- more recurrent funds

- more staff
- more project funds
- less staff turnover

Other: _____

PART C: LANGUAGE

24. Do you believe that the concepts of “human rights” and “social justice” are:

- Similar
- Interchangeable
- Different

Please explain your answer _____

25. Where your organisation could elect to use the language of either “human rights” and/ or “social justice” in your work, why would you choose “human rights”? For reasons of: (you may choose more than one):

- relevance
 - effectiveness
 - specificity
 - persuasiveness
 - legal weight
 - universality
 - strategy
 - more recurrent funds
 - funding
 - political weight
- Does not apply to your organisation
- Other: _____

26. Where your organisation could elect to use the language of either “human rights” and/ or “social justice” in your work, why would you choose social justice? For reasons of: (you may choose more than one):

- relevance
 - effectiveness
 - specificity
 - persuasiveness
 - legal weight
 - universality
 - strategy
 - more recurrent funds
 - funding
 - political weight
- Does not apply to your organisation
- Other: _____

PART D: THE ORGANISATION OF HUMAN RIGHTS ADVOCACY NATIONALLY

27. In your view is there a need for a more targeted national approach to human rights advocacy?

- Yes. Please go to question 30.
- No. Please answer questions 28 and 29

28. Is there an organisation which currently provides a targeted national approach to human rights advocacy?

- Yes. Please name the organisation: _____
- No.

29. Is there an organisation which currently exists that has the capacity to provide a Targeted national approach to human rights advocacy?

- Yes. Please name the organisation: _____
- No.

30. Which, if any, of the following models do you regard would provide a more targeted national approach to human rights advocacy? (you may tick more than one model)

- New peak body
- NGO coalition/alliance
- New national NGO
- Coordinating secretariat
- Adaptation of existing NGO
- Other: _____

31. Which, if any, of the following models would you prefer? Please list 1-5 in order of preference).

- New peak body
- NGO human rights coalition/alliance

- New national NGO
- Coordinating secretariat
- Adaptation of existing NGO
- Other: _____

32. In making your preference, what do you regard as important in determining what model is best going to deliver a national approach to human rights advocacy? (you may tick more than one).

- Effectiveness as a collaborative body with current NGO's in the sector
- Effectiveness as a co-ordinating body with current NGO's in the sector
- Effectiveness as an advocate
- Prospective financial viability
- Acceptability within the sector
- Providing resources/expertise which are not currently provided
- Other: _____

33. How could the model which you prefer assist your organisation in the performance of its current work relating to human rights/social justice? (you may tick more than one).

By providing:

- financial resources
- equipment
- access to media
- access to government bureaucracy
- access to parliamentarians
- other _____
- not at all

By providing staff expertise in

- administration
- human resources

- information technologies
- education
- print publishing
- online publishing
- project management
- program evaluation
- organisational management
- organisational planning
- financial management
- governance
- fund raising
- grant applications
- service provision
- specialty area of service
- human rights standards
- research and writing
- law reform processes
- lobbying
- using news media
- other
- It could not.
- Please give reasons why: _____

34. Would an initiative aimed at promoting a national approach for human rights advocacy and education add value to work already being done by your organisation?

Yes. Please tick a box rating how helpful your organisation would find such an initiative:

Very valuable

Fairly valuable

No view

Of little value

No. Why not? _____

Appendix 2 Organisations surveyed

Aboriginal and Torres Strait Islander Women's Legal Advocacy Service	QLD
Aboriginal Child Family & Community Care State Secretariat	NSW
ACROD	QLD
ACT Women's Legal Centre	ACT
ACTCOSS	ACT
Advocacy Tasmania	TAS
Aged-care Rights Service	NSW
AIDS Council of SA	SA
Albury Wodonga Community Legal Service	VIC
Alice Springs Human Rights Group	NT
Alice Springs Youth Accommodation & Support Services	NT
Association of NESB Women	ACT
Asylum Seekers Centre	NSW
AUSTCARE	ACT
Australian Arabic Council	VIC
Australian Catholic Social Justice Council	NSW
Australian Conference of Leaders of Religious Institutions	NSW
Australian Consumer Association	NSW
Australian Council for Lesbian and Gay Rights	TAS
Australian Council for Overseas Aid	ACT
Australian Council of Social Service	NSW
Australian Council of Trade Unions	Vic
Australian Federation of AIDS Organisations	NSW
Australian Federation of Homeless Organs (AFHO)	ACT
Australian Forum of Human Rights Organisations	
Australian Lawyers for Human Rights	NSW
Australian National Council of Churches	NSW
Australian Pensioners and Superannuants Federation	ACT
Australian Red Cross	NSW
Australian Women Lawyers	VIC
Australia-Tibet Council	NSW
Baptist Community Services	SA
Blind Citizens Australia	VIC
B'nai B'rith	NSW
Bridgewater Community Legal Centre	TAS
Broadmeadows Community Legal Service	VIC
Burnie Youth Accommodation Service	TAS
Cairns Community Legal Centre	QLD
CASE for Refugees	WA
Castan Centre for Human Rights Law	VIC
Catholic Commission for Justice Development and Peace	VIC
Caxton Legal Centre	QLD
Central Aust Aboriginal Family Legal Unit	NT
Central Australian Women's Legal Service	NT
Central Coast Tenancy Advice Service	NSW
Central Community Legal Service	SA
Central Highlands Community Legal Centre	VIC
Central Queensland Community Legal Service	QLD
Centre for International and Public Law	ACT

Children by Choice	QLD
Children Out of Detention (Chilout)	NSW
Childrens & Youth Legal Service of South Australia	SA
Coalition of Aust. Peak Organisations for Women	NSW
Combined Community Legal Centres Group (NSW) Inc	NSW
Communications Law Centre	NSW
Community Legal & Advocacy Centre	WA
Computing Assistance Support & Education	ACT
Consumer Credit Legal Centre (NSW)	NSW
Council on Housing Rights & Evictions (CoHRE)	VIC
Council on the Ageing	NSW
Council to Homeless Persons	VIC
Darebin Community Legal Centre	VIC
Darwin CLC	NT
Darwin Community Legal Service	NT
Deafness Forum of Australia	ACT
Deaths in Custody Watch Committee (WA) Inc	WA
Disability action	SA
Disability Discrimination Legal Centre (NSW)	NSW
Disability Discrimination Legal Service (ACT)	ACT
Disability Discrimination Legal Service Inc (Victoria)	VIC
Disability Discrimination Service	SA
Domestic Violence Advocacy Service	NSW
Domestic Violence Legal Service	NT
Employment Law Centre of Western Australia Inc	WA
Environmental Defenders Office (SA)	SA
Executive Council of Australian Jewry	NSW
Far West Community Legal Centre Inc	NSW
Federation of CLCs (Vic) Secretariat	VIC
Federation of Community Legal Centres (WA)	WA
Federation of Ethnic Communities' Councils of Australia	ACT
Fitzroy Community Legal Services Inc	VIC
Fitzroy Legal Service	VIC
Flemington/Kensington Legal Centre	VIC
Foundation for Aboriginal and Islander Research Action	QLD
Geelong Community Legal Service	VIC
Geraldton Family Advocacy Service	WA
Gilbert and Tobin Centre of Public Law	NSW
Gippsland Community Legal Service	VIC
Gold Coast Community Legal Advice Centre	QLD
Goondiwindi Community Legal Service	QLD
HIV/AIDS Legal Centre (HALC)	VIC
HIV/AIDS Legal Centre (NSW)	NSW
Hobart Community Legal Service	TAS
Human Rights Alliance	VIC
Human Rights Council of Australia	
Human Rights WA	WA
Hunter Community Legal Centre	NSW
Illawarra Legal Centre	NSW
Immigration Advice and Rights Centre	NSW
Inner City Legal Centre	NSW
Intellectual Disability Rights Service	NSW

International Commission of Jurists	NSW
Islamic Women's Welfare Council	VIC
Jesuit Refugee Service	NSW
Katherine Women's Information & Legal Service (KWILS)	NT
Kingsford Legal Centre	NSW
Launceston Community Legal Centre	TAS
Law Council of Australia	ACT
Legal Centre - Community Connections	VIC
Liberty Victoria	Vic
Lifeline Darling Downs & SW Qld	QLD
Logan Youth Legal Service	QLD
Mackay Regional Council for Social Development Ltd	QLD
Marrickville Legal Centre	NSW
Mental Health Law Centre	WA
Mental Health Legal Centre	VIC
Monash Oakleigh Legal Service	VIC
Multicultural Community Services of Central Australia	NT
Multicultural Council of the NT	NT
Murray Mallee Community Legal Service	VIC
National Aboriginal and Torres Strait Islander Legal Services Secretariat	QLD
National Aboriginal Community Controlled Health Organisations	ACT
National Association of Community Legal Centres (NACLC)	NSW
National Caucus of Disability Organisations	NSW
National Childrens and Youth Law Centre	NSW
National Children's and Youth Law Centre	NSW
National CLC Human Rights Network	NSW
National Ethnic Disabilities Alliance	NSW
National Federation of Aboriginal Land Councils	
National Legal Aid	
North and North West Community Legal Service	NSW
North Melbourne Legal Service	VIC
North Queensland Women's Legal Service – Cairns	QLD
North Queensland Women's Legal Service – Townsville	QLD
Northern Community Legal Service	SA
Northern NSW Aboriginal Tenancy Advice Service	NSW
Northern Rivers Community Legal Centre	NSW
Northern Rivers Community Legal Centre	NSW
NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors	NSW
NTCOSS	NT
Nthn Aust Aboriginal Legal Service	NT
Nthn Rivers Social Dev Council	NSW
Nundah Community Legal Centre	QLD
Offenders Aid & Rehab Service	SA
OPTIA	TAS
Oxfam	VIC
Peninsula Community Legal Service (Qld)	QLD
People With Disabilities (WA) Inc	WA
People with Disabilities Australia	NSW
Petrie Community Legal Service	QLD
Physical Disability Council of Australia	QLD
Port Pirie Central Mission	SA
Prisoners Legal Service	QLD

Private Worker Alliance	NSW
Public Health Association of Aust Inc	ACT
Public Interest Advocacy Centre	NSW
Public Interest Advocacy Centre	NSW
Public Interest Law Clearing House (Vic) Inc	VIC
Qld Aged & Disability Advocacy Inc.	QLD
Quaker Service Australia	NSW
Queensland Advocacy Inc	QLD
Queensland Public Interest Law Clearing House Inc	QLD
Redfern legal Centre	NSW
Refugee & Immigration Legal Centre	VIC
Refugee Advice and Casework Service (Aust)	NSW
Refugee Advocacy Service of South Australia Inc	SA
Refugee Buddies	QLD
Refugee Council of Australia	NSW
Riverland Community Legal Service Inc	SA
Roma Community Legal Service	QLD
Roma Mitchell Community Legal Centre	SA
SACOSS	SA
SCALES	WA
Shelter ACT	ACT
Shelter NSW	NSW
Shelter QLD	QLD
Shelter Tasmania	TAS
Shoalcoast Community Legal Centre	NSW
Social Action Research Centre (Anglicare)	TAS
South Australian Council of Community Legal Services	SA
South Brisbane Immigration & Community Legal Service	QLD
South East Community Legal Service Inc	SA
South West Brisbane Community Legal Centre Inc	QLD
South Western Tenancy Advice Service	NSW
Southern Communities Advocacy Legal & Education Service	WA
Southern Community Justice Centre	SA
Southern NSW Aboriginal Tenancy Advice Service - 'Murramia'	NSW
Springvale Community Aid & Advice Bureau	VIC
St Kilda Legal Service	VIC
Suncoast Community Legal Service	QLD
Sunshine Coast Recon Group	QLD
Support & Accommodation Services	QLD
Sussex Street Community Law Service	WA
Tangentyere Council	NT
TASCOSS	TAS
Tenants Advice Service – WA	WA
Toora Women's Shelter	ACT
Toowoomba Community Legal Service	QLD
Top End Women's Legal Service	NT
Top End Women's Legal Service	NT
Townsville Community Legal Service	QLD
UNICEF	NSW
United Nations Association of Australia	VIC
Uniting Church of Australia Social Responsibility and Justice Committee	NSW
University of Newcastle Legal Centre	NSW

Uniya Jesuit Social Justice Centre	NSW
VCOSS	VIC
Victim Support Services	SA
Victorian Aboriginal Legal Service Cooperative Ltd	VIC
Villamanta Legal Service	VIC
WA Human Rights LC	WA
WA Tenants Advice Service	WA
WACOSS	WA
Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service	SA
Welfare Rights & Advocacy Service (WA)	WA
Welfare Rights and Legal Centre (ACT)	ACT
Welfare Rights Centre (NSW)	NSW
Welfare Rights Centre (SA)	SA
Welfare Rights Centre Inc (Qld)	QLD
Welfare Rights Unit (Vic)	VIC
Western NSW Aboriginal Tenancy Advice Service - 'Gunya'	NSW
Western NSW Community Legal Centre Inc	NSW
Western Sydney Community Forum (Granville)	NSW
Westside Community Lawyers Inc	SA
Westside Community Lawyers Inc, Spencer Gulf Office	SA
Wirringa Baiya Aboriginal Women's Legal Centre	NSW
Women's Legal Service	TAS
Women's Refuge, Res & Referral	NSW
Women's Sexual Assault & Support	TAS
Women's Electoral Lobby	ACT
Women's International League for Peace & Freedom	QLD
Women's Karadi Aboriginal Corp	TAS
Women's Law Centre WA	WA
Women's Legal Centre (ACT & Region)	ACT
Women's Legal Resources Centre (NSW)	NSW
Women's Legal Service - Port Augusta	SA
Women's Legal Service (Qld)	QLD
Women's Legal Service (SA)	SA
Women's Legal Service (Tas)	TAS
Women's Legal Service Victoria	VIC
Women's Services Network	ACT
Working Women's Centre, (NSW)	NSW
WRANA	
Women's Rights Action Network	VIC
YAPA	NSW
Youth Advocacy Centre	QLD
Youth Affairs Network Queensland	QLD
Youth Coalition	ACT
Youth Legal Service	WA
Youth Network Tasmania	TAS
Youthlaw	VIC
YWCA Adelaide	SA

Appendix 3 Interviewees

Jane Alley	Emma Hunt
Lisa Baker	Brigid Inder
Nicole Bieske	Graeme Innes
Julie Bishop	Paul Keating
Kathy Brown	David Kinley
Samantha Burchell	Alan Kirkland
Melissa Castan	Phil Lynch
Greg Connellan	Alan Matheson
David Cooper	Mara Moustafine
Rodney Croome	Phil O'Donoghue
Lis de Vries	John Pace
Mick Dodson	Margaret Piper
Andrea Durbach	Eileen Pittaway
Deb Foskey	Marc Purcell
Phillip French	Kathy Richards
Beth Gaze	Chris Sidoti
Howard Glen	Pam Simmons
Cassandra Goldie	Cath Smith
Sue Harris	Joan Staples
Diana Hiles	Dan Stubbs
Leigh Hubbard	George Williams

Appendix 4 Participation Information Statement

AUSTRALIAN HUMAN RIGHTS PROJECT

Participation Information Statement

The research is being conducted by Australian Lawyers for Human Rights and the Australian Human Rights Centre. The project is described in the attached flier.

The research is by way of survey questionnaire.

The research has been approved by the Human Research Ethics Committee of the University of New South Wales.

The research has been funded by the Myer Foundation and the Wynn Family Trust, and is supported by the Law Faculty of the University of New South Wales.

The researchers will be paid from those grant funds.

Participants are asked to receive a questionnaire, and to answer it either in writing or in a telephone interview.

Answering the questionnaire would take about half an hour.

Participation voluntary; if you change your mind about participating you are free to withdraw at any stage.

If you are willing to complete the questionnaire, could you please let us know? You can do so by contacting the Project Manager, Indira Rosenthal, 02 9385 3855 or ahrproject@unsw.edu.au

If now or at any stage you are concerned with the manner in which the research is being conducted you should contact the Human Research Ethics Committee:

phone 9385 4234

fax 9385 6648

email ethics.sec@unsw.edu.au

Please do not hesitate to contact us if you would like to discuss the project in more detail.

Yours sincerely,

Simon Rice
President
Australian Lawyers for Human Rights

John Squires
Director
Australian Human Rights Centre

AUSTRALIAN HUMAN RIGHTS PROJECT

Participation Information Statement Acknowledgement

1. I,

(Name)

of.....,

(address, suburb, etc)

agree to participate as a participant in the research described in the Participant Information Statement or attached to this form.

2. I acknowledge that I have read the Participant Information Statement, which explains why I have been selected, the aims of the research and the nature and the possible risks of the investigation, and the statement has been explained to me to my satisfaction.

3. Before signing this Consent Form, I have been given the opportunity to ask any questions relating to any possible physical and mental harm I might suffer as a result of my participation. I have received satisfactory answers to any questions that I have asked.

4. I understand that I can withdraw from the research at any time without prejudice to my relationship with The University of New South Wales, Australian Lawyers for Human Rights, or the Australian Human Rights Centre.

5. I agree that research data gathered from the results of the study may be published, provided that I will not be identified without give my express consent.

6. I understand that if I have any questions relating to my participation in this research, I may contact Mr John Squires tel 9385 3855; 0418 226 976, who will be happy to answer them.

7. Complaints may be directed to the Ethics Secretariat, The University of New South Wales, SYDNEY 2052 AUSTRALIA (phone 9385 4234, fax 9385 6648, email ethics.sec@unsw.edu.au).

8. I acknowledge receipt of a copy of this Consent Form and the Participant Information Statement.

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